

# COMMENT

## **A BITTER POLICY SHOVED DOWN OUR THROATS: HOW A ONCE ADMIRABLE AND NECESSARY AGRICULTURAL PROGRAM HAS RESULTED IN MAJOR PROFITS FOR BIG BUSINESS AND MAJOR FRUSTRATION FOR OTHERS**

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## I. INTRODUCTION

*"Farming is a science now . . . [t]he image of a farmer in bib overalls  
bumbling along is just wrong. I'm an engineer, for God's sake."<sup>1</sup>*

There is something admirable, almost mythic, about the image of a sun-beaten, hard-working farmer toiling from sunrise to sunset with the singular purpose of providing his community with a necessary food supply.<sup>2</sup> There is no question that America has benefitted immeasurably from this laudable figure throughout much of its history.<sup>3</sup> Through a symbiotic relationship, farmers have also long benefitted from the U.S. government's pro-agricultural programs.<sup>4</sup> With governmental support in the form of subsidies, America's small farmers managed to provide adequate crops through multiple periods of hardship and depression.<sup>5</sup> The current real-

1. Gilbert M. Gaul et al., *Federal Subsidies Turn Farms Into Big Business*, WASH. POST, Dec. 21, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/20/AR2006122001591.html>.

2. See 108 CONG. REC. S8676 (2004) (quoting Thomas Jefferson) ("Cultivators of the earth are the most valuable citizens. They are the most vigorous, the most independent, the most virtuous, and they are tied to their country and wedded to its liberty and interests by the most lasting bands.").

3. See *Historical Timeline: Agricultural Trade and Development*, AGRIC. IN THE CLASSROOM, [http://www.agclassroom.org/gan/timeline/ag\\_trade.htm](http://www.agclassroom.org/gan/timeline/ag_trade.htm) (last visited Sept. 17, 2012) (providing a comprehensive timeline from the 17th century to the end of the 20th century detailing the history of farming in the United States and the effect of international trading partners, technological advances, and legislation on American agriculture).

4. See *id.* (listing farmer-friendly programs, legislation, and treaties, such as the establishment of the U.S. Department of Agriculture's Office of Markets in 1913, the Trade Expansion Act of 1964, and the North American Free Trade Agreement in 1993, which have occurred since the 1700s); see also William S. Eubanks II, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation's Tax Dollars*, 28 STAN. ENVTL. L.J. 213, 220 (2009) (detailing how Roosevelt's New Deal government programs following the Great Depression promoted the stabilization of crop prices to higher levels, thereby permitting farmers to avoid foreclosure).

5. See *Historical Timeline*, *supra* note 3 (noting how the agricultural trade developed over several centuries in the United States); see also JENNIFER D. KEENE ET AL., VISIONS

ity, however, is that much of American farming is now dominated by large industrial farms with computer-controlled equipment, run by profit-driven corporations.<sup>6</sup> These large farms are the natural product of technological and scientific advances over the last several decades.<sup>7</sup> Like many industries, the progression of farm technology has been paramount in creating cost-effective crops and an adequate food supply<sup>8</sup> for a nation of over 300 million people.<sup>9</sup>

While operators and operations on American farms continue to change, governmental assistance in the form of agriculture subsidies have remained relatively constant since the 1930's.<sup>10</sup> The result has been a windfall to large agriculture corporations that now receive a rapidly growing share of government subsidies.<sup>11</sup> Recently, this trend has been advancing at an alarming rate.<sup>12</sup> From 1995 to 2011 the U.S. government

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OF AMERICA: A HISTORY OF THE UNITED STATES 670-71 (2d ed. 2012) (stating that the government's involvement in agriculture subsequent to the Great Depression resulted in improved farming practices, such as paying farmers to plant soil-improving legumes, bringing electricity to rural areas, and sponsoring low-interest loans for rural cooperatives to string electrical lines—bringing ninety percent of American farms electricity by 1950).

6. Gaul et al., *Federal Subsidies Turn Farms Into Big Business*, *supra* note 1.

The transformation of the family farm from a small, self-contained business to a complex, technology-driven enterprise is seen today in a rapidly changing rural landscape dominated by larger and wealthier farms. That landscape shows a vastly different picture of family farms than the one often evoked by legislators and industry groups: bigger, more industrial than agrarian, with owners wealthier than most Main Street Americans.

*Id.*

7. *Id.* For example, a farmer today is more akin to an "industrial farmer," one who uses "computers, technology and science to get the most out of the 1,800 acres of corn and soybeans . . . ." *Id.*

8. *Id.* "Today, most of this nation's food is produced by modern family farms that are large operations using state-of-the-art computers, marketing consultants and technologies that cut labor, time and costs." *Id.*

9. See U.S. Dep't of Commerce, *Current Population*, U.S. CENSUS BUREAU, <http://census.gov> (last visited Sept. 17, 2012) (showing that as of Sept. 17, 2012 at 4:47 PM the United States population was 314,397,546).

10. See Anne B. W. Effland, *U.S. Farm Policy: The First 200 Years*, AGRIC. OUTLOOK, Mar. 2000, at 21, 24, available at [http://www.ucema.edu.ar/u/dm/CAPITULO\\_1/POLITICA\\_EE.UU./US\\_Farm\\_Policy\\_the\\_First\\_200\\_Years.pdf](http://www.ucema.edu.ar/u/dm/CAPITULO_1/POLITICA_EE.UU./US_Farm_Policy_the_First_200_Years.pdf) (stating the last seventy years of farm policy have been dominated by farm income support programs).

11. Gaul et al., *Federal Subsidies Turn Farms Into Big Business*, *supra* note 1 (finding that large farms'—those with a revenue of over \$250,000—share of federal payments is increasing even though they are receiving more than 54% of federal subsidies).

12. *The United States Summary Information*, ENVTL. WORKING GRP., <http://farm.ewg.org/region.php?fips=00000&progcode=total&yr=2010> (last visited Sept. 17, 2012) (asserting that 10% of farms collected 75% of the \$277.3 billion in subsidies from 1995–2011).

doled out \$277.3 billion in agricultural subsidies.<sup>13</sup> Over \$172.2 billion, or 75% of these subsidies, went to a mere 10% of farms.<sup>14</sup> Additionally, during the same period, 62% of farmers—most of them small farmers—did not receive any federal subsidies.<sup>15</sup>

This Comment will focus on the failure of the United States' agriculture subsidies to conform to rapidly changing economic and societal factors. First, this Comment will provide an overview of agricultural subsidies and how they are employed. Next, the Comment will provide a historical analysis of the United States' agricultural policy and the original intent of subsidized farming. It will highlight the reality that subsidies have become so large and misdirected that "the web of overlapping subsidies and payments is detached from the reality of a fundamentally robust farm economy."<sup>16</sup> The focal point will be how subsidized assistance for small farms, though at one time necessary and forward-focused, has resulted in an outdated approach that fails to promote small farmers as originally intended.<sup>17</sup> Moreover this Comment will display how current subsidies ultimately reward big corporations at the expense of small farmers and taxpayers in general.

Next, this Comment will examine the factors and agents driving agriculture policy. "Agri-Business" and its powerful farm lobby,<sup>18</sup> presidential candidates, and legislators of farm states all have a dog in the fight, so to speak, but so do small farmers and the American taxpayers. It will

13. *Id.* A further breakdown of the \$277.3 billion in subsidies from 1995–2011 follows: "\$172.3 billion in commodity subsidies; \$46.6 billion in crop insurance subsidies; \$37.0 billion in conservation subsidies; \$21.4 billion in disaster subsidies." *Id.*

14. *Id.* Two farms alone, Riceland, Inc. and Producers Rice Mill, Inc., received nearly \$1 billion combined over the same period. *Subtotal: Farming Subsidies in United States, 1995–2011*, ENVTL. WORKING GRP., [http://farm.ewg.org/top\\_recips.php?fips=00000&progcode=totalfarm&regionname=theUnitedStates](http://farm.ewg.org/top_recips.php?fips=00000&progcode=totalfarm&regionname=theUnitedStates) (last visited Sept. 17, 2012).

15. *The United States Summary Information*, *supra* note 12. Many of those that did receive subsidy payments received tiny fractions of the distributions received by the large farming corporations. *Id.* While this might seem to make sense, given that the big corporations own much more farmland, it completely misses the intent of assistance to farmers who could not survive without government assistance.

16. DAN MORGAN, *THE GERMAN MARSHALL FUND OF THE U.S. (GMF), THE FARM BILL AND BEYOND*, ECONOMIC POLICY PAPER SERIES 12 (2010), available at <http://www.farmpolicy.com/wp-content/uploads/2010/09/TheFarmBillAndBeyondDanMorgan.pdf>.

17. See Agricultural Adjustment Act of 1933, Pub. L. No. 73-10, § 1, 48 Stat. 31, 31 (noting "[t]hat the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities . . . has largely destroyed the purchasing power of farmers for industrial products . . .").

18. Dan Morgan et al., *Powerful Interests Ally to Restructure Agriculture Subsidies*, WASH. POST, Dec. 22, 2006, [http://www.washingtonpost.com/wp-dyn/content/article/2006/12/21/AR2006122101634\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2006/12/21/AR2006122101634_pf.html) (stating that efforts at reform "will be going up against one of Washington's most effective lobbies.").

highlight the powerful interests hoping to retain the status quo and why they exert so much pressure to retain their corporate entitlements—and why they must be stopped. This Comment will also discuss other harmful consequences of the current farm policy. It will show how certain subsidies have resulted in an incentive to grow specific crops and a disincentive to grow others—and how this unnatural distortion has led to an influx of environmentally hazardous production processes. It will also reveal how price regulations have affected American food choices, the overall availability of food, and obesity. Additionally, it will discuss how the United States' agriculture subsidies have led to an increase in illegal immigration for indigent and undernourished Mexicans, which in turn, exacerbates the immigration issues America faces.

Finally, this Comment will analyze political obstacles and legitimate possibilities of lasting reform. While there is a concerted effort aimed at policy reform, a tremendous amount of political capital and public education will be required to force the necessary changes; if this effort fails, we will all be forced to digest the effects.

## II. WHAT ARE FARM SUBSIDIES?

*Subsidy: a sum of money granted by the state or a public body to help an industry or business keep the price of a commodity or service low.*<sup>19</sup>

To better understand how American agriculture subsidies are outdated and misdirected, it is necessary to understand how these subsidies are employed. There are multiple rationales for providing agricultural subsidies.<sup>20</sup> Governments may desire to “stabilize the income of the farmers, [or] to buffer them from the wild variations in income that come from the impact of weather and other external factors on the production of the farm.”<sup>21</sup> Subsidies can take different forms, though they often “take the form of a guaranteed minimum price for the product or income for the

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19. OXFORD DICTIONARY, available at <http://oxforddictionaries.com/definition/english/subsidy>.

20. See Peggy A. Clarke, *The Future of Food Subsidies*, 101 AM. SOC'Y INT'L L. PROC. 109, 109 (2007) (noting that agricultural subsidies are provided to “stabilize the income of farmers,” to establish “food security” and to “protect prices to the consumer.”). The author gives an excellent description of the challenge of reducing subsidies once given:

Once offered, a subsidy is difficult to end. Economies adjust to the subsidies such that removal of the subsidy will cause at least short-term disruption to the economy. Moreover, subsidies are frequently provided to sooth political constituencies, making them extremely difficult to end. For these reasons, especially where the subsidies go to some of the country's most vulnerable citizens, the trade-offs for removing the subsidies must be significant.

*Id.* at 110.

21. *Id.*

farmer.”<sup>22</sup> “Countries may seek to compensate farmers for other externalities that may benefit society as a whole but do not provide a benefit to the farmer proportionate to the cost. . . .”<sup>23</sup>

Food security is another component of specific subsidy programs.<sup>24</sup> When a country intends to be self-sufficient with certain products it might design a subsidy program to ensure a predetermined output of that product.<sup>25</sup> Governments may also desire to manipulate prices for the consumer.<sup>26</sup> While this governmental price-manipulation might lead to a farm subsidy, “more often instead of direct subsidies it results in price controls, limiting the price a farmer can charge, or limiting the price at the retail store.”<sup>27</sup> Unfortunately, the results of these price controls often act as a disincentive to producers.<sup>28</sup> This disincentive is then combated with additional subsidy programs.<sup>29</sup>

#### A. *The United States*

In the United States, agriculture subsidies are primarily aimed at stabilizing farm income and counteracting unstable market prices.<sup>30</sup> “Subsidies are administered through the Commodity Credit Corporation (CCC)

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* Daniel Sumner of the Library of Economics and Liberty, offers the following contentions of supporters and opponents of farm subsidies:

Economists have criticized farm subsidies on several counts. First, farm subsidies typically transfer income from consumers and taxpayers to relatively wealthy farmland owners and farm operators. Second, they impose net losses on society, often called deadweight losses, and have no clear broad social benefit. Third, they impede movements toward more open international trade in commodities and thus impose net costs on the global economy.

Supporters of farm subsidies have argued that such programs stabilize agricultural commodity markets, aid low-income farmers, raise unduly low returns to farm investments, aid rural development, compensate for monopoly in farm input supply and farm marketing industries, help ensure national food security, offset farm subsidies provided by other countries, and provide various other services. However, economists who have tried to substantiate any of these benefits have been unable to do so.

Daniel A. Sumner, *Agricultural Subsidies Program*, in *THE CONCISE ENCYCLOPEDIA OF ECONOMICS* (David R. Henderson ed., 2007), available at <http://www.econlib.org/library/Enc/AgriculturalSubsidyPrograms.html>.

26. Clarke, *supra* note 20.

27. *Id.*

28. *Id.*

29. *Id.*

30. BELINDA ACUÑA, *THE EFFECT OF US AGRICULTURAL SUBSIDIES ON FARM EXPENSES AND THE AGRICULTURAL LABOR MARKET* 8 (Dep’t of Econ., Univ. of Santa Barbara 2009).

of the U.S. Department of Agriculture (USDA) . . . .”<sup>31</sup> Owners of eligible farms are required to submit applications to receive payment on a specific program.<sup>32</sup> While the distribution process has been modified,<sup>33</sup> the basic process has changed little since the inception of these subsidies.<sup>34</sup> The current policy was designed for a very different country and a very different world, which is why so many individuals and organizations are opposed to the current policy.<sup>35</sup> For example, the 1938 the Agricultural Adjustment Act (AAA) made available “marketing” assistance loans to farmers “if they agreed to an overall production quota in a referendum.”<sup>36</sup> If the quota was approved, the farmers were eligible for a non-secured loan.<sup>37</sup> If prices fell below the loan rate farmers were then able to forfeit their product to the CCC.<sup>38</sup> If prices remained above the loan rate farmers could still sell their grain at market and repay the loan.<sup>39</sup> This policy was essentially the government’s assurance to farmers: if you can do it yourselves, great; if not, we will do it for you. For many small farmers, this was a necessary security for them to be able to stay on and work the land as before.

The program that has received more scrutiny than any other over the last decade is the direct payment subsidy.<sup>40</sup> The payments are just what their name indicates—direct payments to farmers. These payments are made *without regard to market conditions or economic need*.<sup>41</sup> The following is a synopsis of the program:

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31. *Id.*

32. *Id.*

33. See Sara Sciammacco, *The Downfall of Direct Payments*, ENVTL. WORKING GRP. (Oct. 2011), [http://www.ewg.org/report/downfall-direct-payments?utm\\_source=feedburner&utm\\_medium=email&utm\\_campaign=Feed%3A+ewg\\_farm+%28EWG%3A+Ag+Policy%29](http://www.ewg.org/report/downfall-direct-payments?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+ewg_farm+%28EWG%3A+Ag+Policy%29) (stating that, unlike before, “automatic checks go out every year to the largest growers of commodity crops . . . whether farmers need them or not.”).

34. *Id.*

35. *Id.* “How do you justify this kind of money going to a sector of the economy that’s booming while other folks in the country are suffering?” See *id.* (quoting the Environmental Working Group’s Craig Cox).

36. Jon Lauck, *After Deregulation: Constructing Agricultural Policy in the Age of “Freedom to Farm,”* 5 DRAKE J. AGRIC. L. 3, 13 (2000).

37. *Id.*

38. *Id.*

39. *Id.*

40. See generally Sciammacco, *supra* note 33 (providing a timeline that illustrates how direct payment subsidies have “hurt taxpayers, farmers and the environment over the past [fifteen] years.”).

41. *Id.* (noting that when the 2002 re-authorization of “market transition” payments changed their name to “direct” payments, they were still made without regard to need, farm prices, income, the receipt of other subsidies, or whether there was any farming being conducted at all).

Starting in the 1930s, U.S. farm programs focused on reducing crop surpluses and sending checks to farmers when crop prices fell. That all changed in 1996. In a political parallel to today's Tea Party-influenced environment, the Republican-controlled Congress decided that year that it was time to let the free market—not government—drive the farming economy. In renewing the farm bill that year, lawmakers voted to end the traditional farm subsidy system in favor of five years of “market transition” payments to farmers. But then a strange thing happened. The payments that were supposed to decline annually never actually went away. Farm programs turned into a cash crop for big agribusinesses, which co-opted federal policy and turned it into a perennial giveaway that disproportionately benefits large landowners and wealthy farm operations. And that remains the reality today.<sup>42</sup>

Drought aid and crop insurance are two very large forms of subsidized assistance. These programs have also been under the microscope for be-

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42. *Id.* A more detailed explanation, by Dan Morgan, follows:

The program that pays [the farmer] was the central feature of a landmark 1996 farm law that was meant to be a break with the farm handouts of the past. Subsidies began when the Roosevelt administration stepped forward to support millions of Depression-era farmers suffering from low prices. By the early 1990s, U.S. agriculture was a productive marvel, yet was still mired in government controls and awash in complex subsidies. When the Republicans took control of Congress in 1995, they brought a new free-market philosophy toward farm policy. In a break with [sixty] years of farm protections, they promoted the idea that farmers should be allowed to grow crops without restrictions, standing or falling on their own. The result was the 1996 bill, which the Republicans called Freedom to Farm. The idea was to finally remove government limits on planting and phase out subsidies. But GOP leaders had to make a trade-off to get the votes: They offered farmers annual fixed cash payments as a way of weaning them off subsidies.

That sweetener was needed to win over wheat-state Democrats—led by Senate Minority Leader Tom Daschle (S.D.)—and GOP House members from rice and cotton districts. Wheat growers alone stood to receive \$1.4 billion in the first year. The payments for rice growers were increased by \$52 million at the last minute in an effort to win support from Sen. David Pryor (D-Ark.). The new payments were calculated on a farm's “base acres,” or production dating to 1981. For example, if a farmer had planted 400 acres of rice, he was entitled to a check of about \$100 an acre, or \$40,000, every year. The amount per acre varied depending on past production. The payments were unrestricted—farmers got them whether or not they grew any crops, or whether prices were high or low. Owners could do almost anything they wanted with their land, as long as they did not develop it. They could leave it fallow or rent it for pasture. They could set up a hunting retreat. Or, as happened in some Louisiana parishes, landowners could collect payments while planting stands of commercial timber.

Dan Morgan et al., *Farm Program Pays \$1.3 Billion to People Who Don't Farm*, WASH. POST, July 2, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/07/01/AR2006070100962.html>.



ing misguided and wasteful.<sup>43</sup> Over the last several years, the government has continued its policy of giving away billions of dollars to farmers and ranchers who have sustained losses due to “natural disasters.”<sup>44</sup> The problem is that legislation has allowed for so many loopholes that the individuals receiving the assistance often do not have to prove they sustained any loss at all.<sup>45</sup> In one instance, a farmer who was near a fire, but sustained no damage to his land, was entitled to a \$40,000 disaster compensation check from the federal government, by way of the program’s ridiculously lenient identification standards.<sup>46</sup> While the farmer was embarrassed to accept the \$40,000 payment, he stated: “If there is money available, you might as well take it. You would be a fool not to.”<sup>47</sup> “The livestock program was a joke. We had no losses . . . . I don’t know what Congress is thinking sometimes.”<sup>48</sup>

The fact that the government assists farmers with purchasing insurance against disasters is not itself controversial, but a deeper look at how the program is administered raises serious questions.<sup>49</sup> It pays “billions to help farmers buy cheap federal insurance, billions more to private insurance companies to help run the program and billions more to cover the

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43. See Gilbert M. Gaul et al., *No Drought Required For Federal Drought Aid*, WASH. POST, July 18, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/07/17/AR2006071701237.html> (quoting farmers who think these programs are a waste of money).

44. See *id.* (outlining the different kinds of disasters that have been covered under the Livestock Compensation Program between 2002 and 2003). “The money doled out for the livestock program was part of more than \$20 billion that taxpayers have given to ranchers and farmers since 1990 to compensate for droughts, hurricanes, floods and other forms of damaging weather.” *Id.*

45. *Id.* The article states that “[w]ith the rules relaxed by Congress, federal agriculture officials pushed their local offices to find disasters that would make more livestock owners eligible, records and interviews show. It didn’t matter if it was a cold snap or a storm that was two years old.” *Id.* Essentially, the agriculture officials were actually looking for a reason to continue to dole money to people who may not have otherwise benefited, or even needed, federal assistance. After an inspector general audit of the Agricultural Department stated that “payments should have gone only to those with legitimate losses,” it was determined that “the [ ] rules led the USDA to hand out an additional \$234 million in 2003.” *Id.* There is no better example of searching for a use for subsidy funds than when the shuttle crashed on Feb. 1, 2003. *Id.* “To ensure recovery of the debris and pay for emergency costs, President Bush issued a federal disaster declaration. As an unintended result, most of East Texas was then eligible for livestock funds. Denton County’s livestock owners collected \$433,000, records show.” *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. Gilbert M. Gaul et al., *Aid Is a Bumper Crop for Farmers*, WASH. POST, Oct. 15, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/14/AR2006101400807.html>.

riskiest claims.”<sup>50</sup> The problem is that the government also spends billions on disaster payments.<sup>51</sup> “The result is that farmers often get paid twice by the government for the same disaster, once in subsidized insurance and then again in disaster assistance, a legal but controversial form of double-dipping . . . .”<sup>52</sup> “Together, the programs have cost taxpayers nearly \$24 billion since 2000.”<sup>53</sup> This policy applies to all farmers, regardless of income level. This means that profitable farms, with no need of assistance could receive, on top of their self-generated income, support to pay for insurance and disaster relief—even if they did not incur any losses from the disaster.<sup>54</sup> Unnecessary relief, double-dipping payments, assistance for those who already generate millions—not only are the subsidy programs outdated, but they have also become in many respects, a sham. It did not have to be like this. Though once necessary, these subsidized programs no longer meet their original purpose. American agriculture policy changed dramatically as a young nation grew geographically and in total population. However, it is as if time has stood still over the last seventy-five years.

### III. AMERICAN AGRICULTURE POLICY

*“The American is a new man, who acts upon new principles; he must therefore entertain new ideas and form new opinions. From involuntary idleness, servile dependence, penury, and useless labour, he has passed to toils of a very different nature, rewarded by ample subsistence. This is an American.”*<sup>55</sup>

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50. *Id.*

51. *Id.* To make matters worse, “a major share of the money goes to parched and flood-prone areas where farming is tenuous at best and ‘disasters’ seem to happen every year, a review of thousands of records and interviews with dozens of farmers, economists, insurers and government regulators have found.” *Id.* This has the effect of almost guaranteeing large payments each year to a certain group of individuals without regard for the effectiveness of the program. For instance, “[f]armers in Gaines County, a parched stretch of West Texas, collected nearly \$66 million in the past five disaster bills. Cavalier County farmers in North Dakota, soaked by rain and floods, got \$67 million. The money was in addition to \$116 million that farmers in those two counties got in crop insurance payments.” *Id.* This is not to state that assistance should not be given to those farmers who legitimately have been affected by natural disasters, and to be sure there are a great number of individuals who fall into this category, but the example above belies a broken system that benefits a specific number of individuals to the great expense of the many.

52. *Id.*

53. *Id.*

54. See Gaul et al., *No Drought Required For Federal Drought Aid*, *supra* note 43 (describing instances of people taking advantage of assistance programs despite having incurred absolutely no loss).

55. J. HECTOR ST. JOHN DE CRÉVECOEUR, *LETTERS FROM AN AMERICAN FARMER* 70 (1986).

### A. History of American Policy

The United States' agricultural policy has a varied history. In Europe, the feudal system ensured that men could only receive land through birthright.<sup>56</sup> In the "New World," however, "social equality was official doctrine and access to land [was] a basic right."<sup>57</sup> Governmental involvement has changed throughout the years to respond to the economic and political circumstances of the day. Historically, the focus was on land distribution and private farm expansion.<sup>58</sup> With seemingly unlimited land resources, the thrust of early American policy was to get land in the hands of the people so that they could sustain and grow the young country's economy.<sup>59</sup> This focus on distribution lasted until the mid-nineteenth century.<sup>60</sup> As the American population grew, the focus of farm policy shifted from expansion to increasing farm efficiency and productivity.<sup>61</sup> A debate ensued about whether expansion or productivity should receive more attention.<sup>62</sup> The times seemed to favor those who desired a better way of doing things, those who wanted to improve on what they had. "As land policy continued encouraging increasing numbers of independent farmers across the [United States], improving American farmers' productivity and quality of life became a goal among progressive farmers,

56. ELINOR LANDER HORWITZ, *ON THE LAND: THE EVOLUTION OF AMERICAN AGRICULTURE* 33 (1980).

57. *Id.* This policy obviously applied only to certain individuals and was largely dependent on race, gender, and national origin. *Id.* at 34.

58. Effland, *supra* note 10, at 21.

59. *Id.*

60. *Id.* at 21–22.

61. *Id.* at 21. In 1863, the first U.S. Land Commissioner, Isaac Newton, quoted Jonathan Swift by stating "[i]t should be the aim of every young farmer to do not only as well as his father but to do his best: to make two blades of grass grow where but only one grew before." HORWITZ, *supra* note 56, at 21.

62. Effland, *supra* note 10, at 21–22. Interestingly, this debate foreshadowed the current state of American farm policy with its opposing forces.

In the decades preceding the Civil War, proponents of the southern plantation system of agriculture began to oppose the increasingly open access to public land. They viewed it as public promotion of an agricultural system based on an agrarian ideal that was at odds with their own system. With secession of the southern states in 1860, southern political leaders left the U.S. Congress, leaving proponents of free distribution of public land and other forms of assistance to small farmers virtually unopposed. Success in embedding this agrarian ideal in land policy, symbolized by passage of the Homestead Act, laid the basis for continued influence of that ideal in farm policy debates into the future. The national government had used its resources—in this case land—to encourage and support expansion of an agricultural structure of independent family farms. Thus Federal land policy created a precedent of Federal support for an independent family farm system, which has continued to be a prominent public goal of farm policy.

*Id.*

journalists, educators, and producers of commercial farm inputs.”<sup>63</sup> Things remained relatively stable into the twentieth century, until internal and external factors began to radically change the nation’s economic position.<sup>64</sup>

By 1920, American farmers had developed the most profitable and efficient agricultural system in the world.<sup>65</sup> With the exception of African-American and White tenant sharecroppers, many farmers enjoyed relative economic prosperity.<sup>66</sup> However, after World War I the situation began to change.<sup>67</sup> International demand began decreasing, as other countries—namely Britain and France—were able to meet their domestic needs,<sup>68</sup> which resulted in an overproduction of American agricultural products.<sup>69</sup> As a result, a rapid decline in the United States followed.<sup>70</sup> This “agricultural recession”<sup>71</sup> was the just the beginning of an intensely difficult period for American farmers. As the downturn in agricultural profitability began to take shape, America itself was falling into some of its darkest days; the Great Depression loomed on the horizon.

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63. *Id.* at 22. Effland also states:

Success in embedding this agrarian ideal in land policy, symbolized by passage of the Homestead Act, laid the basis for continued influence of that ideal in farm policy debates into the future. The national government had used its resources—in this case land—to encourage and support expansion of an agricultural structure of independent family farms. Thus Federal land policy created a precedent of Federal support for an independent family farm system, which has continued to be a prominent public goal of farm policy.

*Id.*

64. *Id.* at 23–24. See CAROLYN DIMITRI ET AL., THE 20TH CENTURY TRANSFORMATION OF U.S. AGRICULTURE AND FARM POLICY, U.S. DEP’T OF AGRIC. 2 (2005), available at [http://www.ers.usda.gov/media/259572/eib3\\_1\\_.pdf](http://www.ers.usda.gov/media/259572/eib3_1_.pdf) (indicating significant transformations in agriculture at the turn of the twentieth century).

65. R. DOUGLAS HURT, PROBLEMS OF PLENTY: THE AMERICAN FARMER IN THE TWENTIETH CENTURY 41 (2002).

66. *Id.* at 42.

67. See *id.* at 42–45 (stating that by the 1920s America had an extremely profitable and productive agricultural system).

68. *Id.* at 45.

69. *Id.* at 44.

70. *Id.* “A year after the agricultural recession began, farmers found themselves with only two-thirds of the purchasing power they had enjoyed in 1913.” *Id.*

71. *Id.* at 45. The agricultural recession started in 1920 and lasted three years serving as a solution to the rapid production, which occurred because of the war. *Id.*

## B. *The Great Depression & The Agricultural Adjustment Act*

American agricultural policy has remained relatively unchanged over the last seventy-nine years.<sup>72</sup> Agricultural policies were developed at a very different time, for it was in the midst of the Great Depression that a policy of “direct government intervention to provide farm income support” quickly supplanted earlier objectives.<sup>73</sup> After the Wall Street collapse of 1929, few people were left unaffected by the rapid economic decline that immediately followed.<sup>74</sup> Farmers were certainly not spared as they faced a drastic decrease in demand prior to the onset of the Depression in 1929; thus, the economic downturn in 1929 created additional financial problems causing many farmers to seek government regulation of farm programs.<sup>75</sup> Additionally, severe drought conditions continued to create more problems for those in the farming industry.<sup>76</sup>

These perils lead to the creation of a new agricultural policy, largely identified by Federal assistance programs.<sup>77</sup> The keystone of this new policy was the Agricultural Adjustment Act of 1933, which was a part of President Franklin Roosevelt’s New Deal.<sup>78</sup> The AAA provided the government with the power to “set minimum prices and included government stock acquisition, land idling, and schemes to cut supplies by destroying livestock. Land idling and livestock destruction were sometimes mandatory and sometimes induced by compensation.”<sup>79</sup> Direct governmental support in the form of agriculture subsidies has changed

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72. Daniel A. Sumner, *Agricultural Subsidies Program*, in *THE CONCISE ENCYCLOPEDIA OF ECONOMICS* (David R. Henderson ed., 2007), available at <http://www.econlib.org/library/Enc/AgriculturalSubsidyPrograms.html>.

73. Effland, *supra* note 10, at 21.

74. See William S. Eubanks, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health With Our Nations Tax Dollars*, 28 *STAN. ENVTL. L.J.* 213, 218 (2009) (discussing how the Great Depression and environmental changes affected farmers). See generally JOHN KENNETH GALBRAITH, *THE GREAT CRASH 1929* (2009) (discussing the lead up to and the wide spread impacts of the market crash in 1929).

75. See HURT, *supra* note 65, at 65 (considering that federal regulations would cause many farmers to sacrifice their independence in profitability). Prior the market crash of 1929, President Hoover signed into law on June 15, 1929, the Agricultural Marketing Act. *Id.* at 61. The purpose of the Agricultural Marketing Act was to place the agricultural industry on equal footing with other industries. *Id.* However, due to the effects of the major depression it was ineffective. *Id.* at 62. Although this act proved to be ineffective, it contributed to the beginning of government’s involvement in the agricultural economy. *Id.* at 66.

76. *1930’s Drought*, CBC (Aug. 6, 2004), <http://www.cbc.ca/news/background/agriculture/drought1930s.html>.

77. Effland, *supra* note 10, at 23.

78. Sumner, *supra* note 72.

79. *Id.* (citing MURRAY R. BENEDICT, *FARM POLICIES OF THE UNITED STATES, 1790–1950: A STUDY OF THEIR ORIGINS AND DEVELOPMENT* (1953)).

little since it began in the 1930s.<sup>80</sup> The essential aim of the AAA was "to relieve the existing national economic emergency by increasing agricultural purchasing power."<sup>81</sup> The bill began with "A Declaration of Emergency" and cited the following:

[T]he present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities . . . .<sup>82</sup>

The foundation of the AAA was the establishment of production regulation, which allowed for price controls.<sup>83</sup> The implementation of price controls was very contentious and in 1936 the Supreme Court struck down the original AAA as unconstitutional.<sup>84</sup> However, agricultural support continued when Congress remedied the unconstitutional aspects of the original AAA and passed the Agricultural Adjustment Act of 1938, which continued to focus on production control.<sup>85</sup> The 1938 legislation withstood constitutional challenges.<sup>86</sup> Instantaneously, the different AAA bills of the 1930's had immense impacts on agriculture. Farmers

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80. *Id.*

81. Agricultural Adjustment Act of 1933, Pub. L. No. 73-10, § 25, 48 Stat. 31, *invalidated by* *United States v. Butler*, 297 U.S. 1 (1936).

82. *Id.*

83. *United States v. Butler*, 297 U.S. 1, 54-55 (1936).

84. *See id.* at 78 (contending that the provisions of the Agricultural Adjustment Act should be managed by the states, and that Congress does not have the power to impose the exactions as denoted in the Act).

85. Agricultural Adjustment Act of 1938, Pub. L. No. 75-430, § 52 Stat. 31 (codified as amended at 7 U.S.C. 35 (1938)); HURT, *supra* note 65, at 82. Congress implemented a plan that focused on "acreage allotments and payments for specified conservation practices." *Id.* at 82.

86. *Wickard v. Filburn*, 317 U.S. 111, 133 (1942). This case held:

Concurrently with the increase in the amount of the penalty Congress authorized a substantial increase in the amount of the loan which might be made to cooperators upon stored farm marketing excess wheat. That appellee is the worse off for the aggregate of this legislation does not appear; it only appears that if he could get all that the Government gives and do nothing that the Government asks, he would be better off than this law allows. To deny him this is not to deny him due process of law.

*Id.*

who were able to survive the harsh conditions were able to secure immediate assistance from institutions created by the AAA.<sup>87</sup>

The 1938 AAA increased discretion to federal administrators to determine agricultural policy.<sup>88</sup> It stated that the Secretary of Agriculture “shall have power to carry out the purposes [of the Act]. . . by making payments or grants of other aid to agricultural producers, including tenants and sharecroppers, in amounts determined by the Secretary to be fair and reasonable . . . .”<sup>89</sup> As we shall see, fair and reasonable is not the same today as it was in the 1930’s.

### C. *Missing The Chance to Change*

During World War II, many policy issues were shelved as the nation’s attention was focused on action overseas. Agriculture production levels were not at the forefront of congressional debate. Though errors and oversights might be forgiven during the bloodiest conflict this world has ever seen,<sup>90</sup> there have been a multitude of opportunities to modify and update America’s outdated agricultural policy, but little action has been taken. Subsidies “were intended to keep food cheap, to keep farmers on the land, to diversify the crop base, and, above all, to be temporary.”<sup>91</sup> Unfortunately, “[t]hey have succeeded only in the first goal.”<sup>92</sup> Technol-

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87. Agricultural Adjustment Act of 1938, § 52 (providing for the conservation of natural soil in order to create an equal balance of agricultural resources in foreign and interstate commerce).

88. *See id.* (providing for the conservation of natural soil in order to create an equal balance of agricultural resources in foreign and interstate commerce).

89. *Id.*

90. *See generally World War II: An Overview*, SCHOLASTIC, <http://www.scholastic.com/teachers/article/world-war-ii-overview> (last visited Sept. 17, 2012) (detailing the horrific events of World War II).

91. RICHARD MANNING, *AGAINST THE GRAIN: HOW AGRICULTURE HAS HIJACKED CIVILIZATION* 95 (2004).

92. *Id.* Another author stated that “[a]lthough well-intentioned at the outset, the Farm Bill’s subsidy program has gradually snowballed into a legislative package of subsidized commodities that increasingly benefits the largest of agricultural producers.” Eubanks, *supra* note 74, at 221.

Since the 1933 Farm Bill was enacted as a temporary fix to an emergency farm crisis, Congress is required to either pass a new Farm Bill every five to seven years when the previous bill expires or allow the bill to lapse into pre-Farm Bill agricultural policy whereby the market is not distorted by governmental subsidies.

*Id.* Although the original farm bill achieved its objective of relieving the farm crisis of the Great Depression, each Congress continues to pass an updated version of the bill. *Id.* The Washington Post summarized:

What began in the 1930s as a limited safety net for working farmers has swollen into a far-flung infrastructure of entitlements that has cost \$172 billion over the past decade. In 2005 alone, when pretax farm profits were at a near-record \$72 billion, the federal

ogy has produced tractors, automatic cotton pickers, artificial insemination of cattle, vegetable harvesters, and many other useful farm products,<sup>93</sup> but the overall federal agricultural policy changed little in the years following World War II.<sup>94</sup>

Today, we have many of the same programs that were implemented to alleviate the tragic consequences of the Great Depression.<sup>95</sup> The United States' economy has gone through periods of expansion and recession since the Great Depression,<sup>96</sup> but subsidies continue to find their way into American farms, in larger and larger quantities.<sup>97</sup> Moreover, the subsidies that were originally intended to assist small farmers are now increasingly distributed to large farming corporations.<sup>98</sup> This raises two obvious questions: Why does the federal government continue such an outdated policy today? And, what are the factors behind the federal government's lack of change? To answer either of these questions, one must first examine how the federal government has employed its farm subsidies, and, second, who has benefited financially.

A deeper look into the current state of subsidized agriculture shows some rather startling figures. For instance, in 2011, the U.S. taxpayer sup-

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government handed out more than \$25 billion in aid, almost 50 percent more than the amount it pays to families receiving welfare.

Dan Morgan et al., *Farm Program Pays \$1.3 Billion to People Who Don't Farm*, WASH. POST, July 2, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/07/01/AR2006070100962.html>.

93. CAROLYN DIMITRI ET AL., *THE 20TH CENTURY TRANSFORMATION OF U.S. AGRICULTURE AND FARM POLICY*, U.S. DEPT OF AGRIC. 6 (2005), available at [http://www.ers.usda.gov/media/259572/eib3\\_1\\_.pdf](http://www.ers.usda.gov/media/259572/eib3_1_.pdf). See generally HURT, *supra* note 65, at 146–47 (stating that technology rapidly advanced in the twentieth century).

94. Kathleen Masterson, *The Farm Bill: From Charitable Start To Prime Budget Target*, NAT'L PUB. RADIO (Sept. 26, 2011, 12:41 PM), <http://www.npr.org/blogs/thesalt/2011/09/26/140802243/the-farm-bill-from-charitable-start-to-prime-budget-target> ("From 1933 to 1996, the farm bill pretty much ran this way: [t]he government bought and stored massive amounts of grain, controlling its release on the market to prop up prices, and the U.S. Secretary of Agriculture dictated to farmers yearly how much of their land they needed to lie fallow to get paid.").

95. MANNING, *supra* note 91; see also Masterson, *supra* note 94 (explaining how the farm bill was initially implemented as a temporary solution during the Depression, however it has now become a permanent fixture).

96. See *Historical Timeline*, *supra* note 3 (displaying the many different economic periods throughout U.S. history); see also *US Business Cycle Expansions and Contractions*, NAT'L BUREAU OF ECON. RESEARCH, <http://www.nber.org/cycles/cyclesmain.html> (last visited Sept. 17, 2012) (describing at least eleven periods of U.S. economic growth and contraction since The Great Depression).

97. See MANNING, *supra* note 91 (commenting that "[s]ubsidy payments have skyrocketed.").

98. See HURT, *supra* note 65, at 149 (discussing a recent trend in which large corporate farms, not small farms, receive the most money from the federal government).



ported roughly \$15.2 billion in farm subsidies.<sup>99</sup> Also, from 1995 to 2011, the federal government issued overall \$277.3 billion in agricultural subsidies.<sup>100</sup> Over \$172.2 billion, or 75%, of these subsidies went to merely 10% of farms.<sup>101</sup> And during the same period, 62% of farmers, almost all of them small farmers, did not receive any federal subsidies.<sup>102</sup> More specifically, over the same period, the top 10% of subsidy recipients received \$31,400 per year while the bottom 80% received only \$594 per year.<sup>103</sup>

While farming has changed drastically over the last several decades,<sup>104</sup> subsidies have remained a consistent part of American agricultural policy.<sup>105</sup> While many of the farms are controlled by individuals or families, many of them have developed into moderate-sized corporations, because of the accounting and legal benefits that are normally attributed to those business models.<sup>106</sup> In essence, the structure of the farming industry has transitioned into one dominated by corporate farms.<sup>107</sup> The result is that larger farms are receiving larger payments.<sup>108</sup> Given the make-up of today's American farms, the modern-day benefactors of this seventy-five

99. *2011 Farm Subsidy Database*, ENVTL. WORKING GRP., <http://farm.ewg.org/progdetail.php?fips=00000&progcode=total&page=conc&yr=2011&regionname=theUnitedStates> (last visited Sept. 17, 2012). Farmers have proceeded to derive increasing portions of their income from "off-farm" activities as well. See also DIMITRI ET AL., *supra* note 93, at 2–3 ("By 1970, more than half of farms had off-farm income, and by 2000, 93 percent of farms earned off-farm income. Off-farm work has played a key role in increased farm household income; while farm household income was once below the national average, in 2002 it exceeded the national average by nearly \$8,000.").

100. *2011 Farm Subsidy Database*, *supra* note 99.

101. *Id.*

102. *Id.*; see also 1 U.S. DEP'T AGRIC., 2007 CENSUS OF AGRICULTURE: UNITED STATES SUMMARY AND STATE DATA 3 (2009) (displaying a more comprehensive collection of agricultural data tables).

103. *2011 Farm Subsidy Database*, *supra* note 99.

104. See generally *Historical Timeline*, *supra* note 3 (cataloging events and the historical development of American agriculture according to decade and category).

105. See generally HISTORY OF AGRICULTURAL PRICE-SUPPORT AND ADJUSTMENT PROGRAMS, 1933–84, U.S. DEP'T OF AGRIC. (1984) (describing the major agricultural legislative acts and programs from 1933 through 1984).

106. *Demographics*, U.S. ENVTL. PROTECTION AGENCY (EPA), <http://www.epa.gov/oecaagct/ag101/demographics.html> (last updated June 27, 2012); Gaul et al., *Federal Subsidies Turn Farms Into Big Business*, *supra* note 1 (describing how family farms have essentially developed into larger operations by using different technological advancements and marketing consultants).

107. *Demographics*, *supra* note 106; Gaul et al., *Federal Subsidies Turn Farms Into Big Business*, *supra* note 1 (explaining that despite the dominant existence of family-owned farms, the trend has been to focus on agricultural production).

108. See Gaul et al., *Federal Subsidies Turn Farms Into Big Business*, *supra* note 1 ("Large family farms, defined as those with revenue of more than \$250,000, account for nearly 60[%] of all agricultural production but just 7[%] of all farms. They receive more than 54[%] of government subsidies.").

year old policy are large, wealthy farms.<sup>109</sup> As with many issues facing policy decisions, politics plays a vital role in determining outcomes. Agriculture subsidies are no exception as they continue to be predicated on political actors and factors.

#### IV. THE AGENTS OF STATUS QUO

*"One of the reasons I made that mistake is that I paid particular attention to the farmers . . . and I had a certain fondness for the farmers in the state of Iowa because I was about to run for president."*<sup>110</sup>

Lobbyists, farm-state politicians, even presidential candidates, and other powerful corporate players are important actors who have helped secure the longevity of agriculture subsidies.<sup>111</sup> For some, the desire to continue with the same policies is understandable—they want to help their communities. The problem is that the collective efforts of these different actors have resulted in a seemingly perpetual cycle of pay-to-plant. This might not be such a terrible thing if it resulted in communities supporting their local farmers, or even if the support received by and large went to those that might not survive without assistance. Unfortunately, the truth reveals that this is certainly not the case.

##### A. The Farm Lobby

The "farm lobby" has been incredibly successful over the years.<sup>112</sup> The modern farm lobby is financed by coalitions that include billion dollar corporations.<sup>113</sup> Their efforts are typically understood as protecting America's farmers, which seems reasonable. The reality, however, is that billion dollar corporations seek to continue outdated agricultural policies and in effect these large companies, already bringing in tremendous profits, continue to reap taxpayer funded subsidies. Stating that small farmers' interests are not as well represented in Washington is not

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109. *Id.*

110. Quotation from Al Gore in Tom Deimer, *Al Gore Mea Culpa: Support for Corn-Based Ethanol Was a Mistake*, POL. DAILY (Nov. 23, 2010), <http://www.politicsdaily.com/2010/11/23/al-gore-mea-culpa-support-for-corn-based-ethanol-was-a-mistake/>.

111. See Lauren Etter & Greg Hitt, *Farm Lobby Beats Back Assault on Subsidies*, WALL ST. J., Mar. 27, 2008, <http://online.wsj.com/article/SB120657645419967077.html> (explaining the long-lasting ties between the farming lobbyists, lawmakers, and politicians).

112. See *id.* (describing the influence and power of farm lobbyists on farm bill legislation).

113. See, e.g., Russ Chorra, *Monsanto's Deep Roots in Washington*, OPEN SECRETS BLOG (May 9, 2012, 3:57 PM), <http://www.opensecrets.org/news/2012/05/monsantos-deep-roots-in-washington.html> (showing that Monsanto, which had total revenues of \$11.8 billion in 2011, is one of the many large firms that donates heavily to lobbying efforts).

disingenuous. It requires no great leap of logic to conclude that hired lobbyists of major corporate farms will in fact expend their efforts to benefit those very same corporations. Their objective is to advance the interests of agribusinesses; in other words, to keep the status quo. “For now, the strategy seems to be . . . to hold on to what they have for as long as possible.”<sup>114</sup> In 2007 “[t]he agribusiness industry plowed more than \$80 million into lobbying . . . [and] [m]uch of that was focused on the farm bill.”<sup>115</sup> These advocacy groups work day and night to ensure that America’s agricultural subsidies are not reduced or eliminated.

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114. Mike Dorning & Andrew Martin, *Farm Lobby’s Power Has Deep Roots*, FLORIDA FARMERS, (June 4, 2006, 6:48 AM), <http://www.floridafarmers.org/news/articles/Farmlobby’spowerhasdeeproots.htm>. In 1993 the Secretary of Agriculture, Michael Espy, was charged with receiving illegal gifts from a farm lobbying group. *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 400–01 (1999). The Supreme Court reviewed the case to determine whether or not Espy’s actions were a direct result of the gifts he received, making them illegal. *Id.* at 405. It was never in doubt, however that the Secretary of Agriculture did in fact receive the gifts from the lobbying association and that his subsequent actions were favorable to the group. *Id.* at 414.

Respondent is a trade association that engaged in marketing and lobbying activities on behalf of its member cooperatives, which were owned by approximately 5,000 individual growers of raisins, figs, walnuts, prunes, and hazelnuts. Petitioner United States is represented by Independent Counsel Donald Smaltz, who, as a consequence of his investigation of former Secretary of Agriculture Michael Espy, charged respondent with, *inter alia*, making illegal gifts to Espy . . . .

*Id.* at 400–01.

115. Lauren Etter & Greg Hitt, *Farm Lobby Beats Back Assault on Subsidies*, WALL ST. J., Mar. 27, 2008, <http://online.wsj.com/article/SB120657645419967077.html>. A more recent example of the farm lobby’s impact on federal policy is the recent passage of updated nutritional guidelines for schools. The New York Times featured several stories about the politics behind the new guidelines. One of the articles highlighted how “[f]ood companies including ConAgra, Del Monte Foods and makers of frozen pizza like Schwan argued that the proposed rules would raise the cost of meals and require food that many children would throw away.” Ron Nixon, *Congress Blocks New Rules on School Lunches*, N.Y. TIMES, Nov. 15, 2011, [http://www.nytimes.com/2011/11/16/us/politics/congress-blocks-new-rules-on-school-lunches.html?\\_r=2](http://www.nytimes.com/2011/11/16/us/politics/congress-blocks-new-rules-on-school-lunches.html?_r=2). These companies called the legislative response “reasonable,” insisting that the Agriculture Department was trying to go too far. *Id.* John Keeling, Executive VP and CEO of the National Potato Council actually stated that “[t]his is an important step for the school districts, parents and taxpayers who would shoulder the burden of U.S.D.A.’s proposed \$6.8 billion school meal regulation that will not increase the delivery of key nutrients.” *Id.*

Huffington Post food critic, Kristin Wartman, also wrote the following:

If there were any lingering doubts as to whom our elected representatives really work for, they were put to rest Tuesday when Congress announced that frozen pizza was a vegetable. The [U.S.] Congress voted to rebuke new USDA guidelines for school lunches that would have increased the amount of fresh fruit and vegetables in school cafeterias and instead declared that the tomato paste on frozen pizza qualified it as a vegetable.

The farm lobby wields a tremendous amount of influence, due in large part to Washington's proverbial revolving door.<sup>116</sup> Though not unique to the farm lobby, the revolving door has been truly successful at seeking out former Capitol Hill staffers and moving in high-level lobbyists.<sup>117</sup> In 2011, the U.S. Senate selected Debbie Stabenow, a former general counsel of one of the most influential agricultural lobbying firms, to serve as the Chairwoman for the Senate Agricultural Committee.<sup>118</sup> The committee did not try to downplay the Senator's connections with a lobbying firm.<sup>119</sup> The president of the American Farm Bureau affirmed this connection by congratulating Sen. Stabenow on her new position by saying the "Farm Bureau has enjoyed its working relationship in the past with Sen. Stabenow and we look forward to continuing our work together in her new capacity."<sup>120</sup> With all the efforts of the farm lobby, it follows that they need partners from within the political system to ensure their clients get the result they desire—more of the same.

## B. *Politicians*

Lobbying efforts, public relations, and national trends affect political calculations, but to most politicians, they all take a back seat to votes. Farm state politicians have a clear incentive to supporting agricultural

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For this we can thank large food companies—in this case ConAgra and Schwan—which pressured Congress to comply with their financial interests. It simply doesn't suit the makers of frozen pizza, chicken nuggets and tater tots for schools to offer real food in the form of fresh fruits and vegetables.

Kristen Wartman, *Pizza is a Vegetable? Congress Defies Logic, Betrays Our Children*, HUFFINGTON POST (Nov. 18, 2011, 12:37 PM), [http://www.huffingtonpost.com/kristin-wartman/pizza-is-a-vegetable\\_b\\_1101433.html](http://www.huffingtonpost.com/kristin-wartman/pizza-is-a-vegetable_b_1101433.html). *Contra* Sara Kliff, *No, Congress Did Not Declare Pizza a Vegetable*, WASH. POST (Nov. 21, 2011, 9:15 AM), [http://www.washingtonpost.com/blogs/ezra-klein/post/did-congress-declare-pizza-as-a-vegetable-not-exactly/2011/11/20/gIQA BXgmhN\\_blog.html](http://www.washingtonpost.com/blogs/ezra-klein/post/did-congress-declare-pizza-as-a-vegetable-not-exactly/2011/11/20/gIQA BXgmhN_blog.html) (stating that "it's far from clear how much this decision matters for what students actually eat."). "While the U.S. Department of Agriculture writes guidelines for what school meals should look like, few schools actually follow them. Just 20[%] of schools served meals that met federal guidelines for fat content." *Id.*

116. See Dorning, *supra* note 114 (describing the relationship between the farmers, lobbyists, and farm-state congressmen as a self-perpetuating cycle of money).

117. See *id.* (commenting on how the farm lobby maintains good will by "offering jobs to members of Congress and their staffs.").

118. See *About Debbie Stabenow*, STABENOW, [http://www.stabenow.senate.gov/?p=about\\_senator](http://www.stabenow.senate.gov/?p=about_senator) (last visited Sept. 26, 2012) (stating that Stabenow was elected to the U.S. Senate in 2000 and named chair of the committee in 2011).

119. See Am. Farm Bureau Fed'n, *Statement by Bob Stallman, President American Farm Bureau Federation Regarding Sen. Stabenow to Chair Ag Committee*, FB: THE VOICE OF AGRIC. (Nov. 19, 2012), <http://www.fb.org/index.php?action=newsroom.news&year=2010&file=nr1119.html> (acknowledging their past working relationship).

120. *Id.*

subsidies—getting re-elected.<sup>121</sup> However, this is not always a completely self-serving interest. Elected officials are expected to fight for their constituents and a representative of a district whose entire economy is predicated on farming must work to ensure that farmers have all benefits possible—regardless of the size of their outfit.<sup>122</sup> Lobbyists would not get far without farm state officials sponsoring farm bills and offering quid pro quos with other elected officials.<sup>123</sup> Every five years, when the farm bill is up for renewal, a large and consistently similar group of legislators seek to increase farm subsidy funding.<sup>124</sup> Given that a large and growing number of states are able to dip into the growing pot of farm subsidies, more and more state and federal legislators are working to secure funding for their citizens.<sup>125</sup>

The trouble is that when it comes to funding, especially in the House of Representatives, legislators tend to focus rather narrowly on what benefits their constituents while ignoring what makes the most sense for the entire country.<sup>126</sup> The result is that we continue funding an outdated system spurred by increasing taxpayer subsidies which prevent farm legisla-

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121. See Dorning, *supra* note 114 (asserting that farmers reward politicians for their support of subsidies with votes in key races).

122. See Ron Nixon, *School Lunch Proposals Set Off a Dispute*, N.Y. TIMES, Nov. 1, 2011, [http://www.nytimes.com/2011/11/02/us/school-lunch-proposals-set-off-a-dispute.html?\\_r=2&pagewanted=all](http://www.nytimes.com/2011/11/02/us/school-lunch-proposals-set-off-a-dispute.html?_r=2&pagewanted=all) (alluding to the fact that farm state politicians have a vested interest in food policy and says “the battle [for school lunch nutritional guidelines] is shaping up as a contentious and complicated fight involving lawmakers from farm states and large low-income urban areas that rely on the program, which fed some 30 million children last year with free or subsidized meals. Food companies have spent more than \$5.6 million so far lobbying against the proposed rules.”).

123. See Dorning, *supra* note 114 (explaining that Combest spent eighteen years advocating for subsidies on Capitol Hill while receiving political benefits).

124. See MORGAN, *THE FARM BILL AND BEYOND*, *supra* note 16, at 4 (providing a detailed account of the history of the farm bill and discussing current debates surrounding future reform); see also Dan Morgan et al., *Powerful Interests Ally to Restructure Agriculture Subsidies*, *supra* note 18 (discussing various debates surrounding the farm bill); Brian Riedl, *How Farm Subsidies Became America's Largest Corporate Welfare Program*, THE HERITAGE FOUND. (Feb. 25, 2002), <http://www.heritage.org/research/reports/2002/02/farm-subsidies-are-americas-largest-corporate-welfare-program> (arguing that the farm bill is a corporate welfare program that shifts money to large farms and agribusinesses at the expense of taxpayers and small farmers).

125. See Dorning, *supra* note 114 (illustrating the dynamic of relationships between legislators and the farming community through Larry Combeck's view as former chair of the House Agricultural Committee and current farm lobbyist); MORGAN, *THE FARM BILL AND BEYOND*, *supra* note 16, at 28 (detailing an account of the history of the farm bill and outlining current debates surrounding reform).

126. See Dorning, *supra* note 114 (commenting on the relationship between legislators and the farm lobby).

tion from reaching the President's desk that is forward thinking in its aims.<sup>127</sup>

Even presidential candidates influence the discussion on agricultural policies. Every four years eager politicians make a dash to Iowa and other farm states to secure their party's nomination for president.<sup>128</sup> Some of the early states' economies, specifically Iowa, rely heavily on farm subsidies.<sup>129</sup> Essentially all serious candidates from both major parties, those that have a legitimate chance at securing the nomination, publicly favor those policies that benefit the early contest states.<sup>130</sup> The result is that most peoples' chosen candidate becomes an outspoken advocate of farm subsidies.<sup>131</sup> Virtually all presidential candidates over the past century have been supporters of farm subsidies in some fashion or another.<sup>132</sup> Former Vice-President Al Gore succinctly discussed the pressures of farm politics years after running for president. In discussing his

127. See Brett Lorenzen, *Move Along, Nothing to See Here*, ENVTL. WORKING GRP. (Dec. 6, 2011), [http://www.ewg.org/agmag/2011/12/move-along-nothing-to-seehere/?utm\\_source=feedburner&utm\\_medium=email&utm\\_campaign=feed%3A+AgMag+%28Environmental+Working+Group+AgMag%29](http://www.ewg.org/agmag/2011/12/move-along-nothing-to-seehere/?utm_source=feedburner&utm_medium=email&utm_campaign=feed%3A+AgMag+%28Environmental+Working+Group+AgMag%29) (pointing out that the hearings surrounding the 2012 farm bill address a narrow set of interests). As Congress prepares to craft together a 2012 farm bill, hearings have begun to place the proper information in front of those very individuals who will be voting on the upcoming legislation. *Id.* It should be no surprise, though it is certainly ridiculous, that thus far, the vast majority of individuals invited to speak in front of congressional panels have been pro-agribusiness. *Id.* Brett Lorenzen, a writer for the Environmental Working Group, discussed the recent hearings concerning the upcoming bill. Lorenzen stated that "[n]early one-fourth addressed the farm 'safety net'—i.e., subsidies and taxpayer-subsidized insurance." *Id.* "Dairy, livestock, commodity crops and biofuels, industrial agriculture were the focus of more than half of the hearings" and "featured only testimony from witnesses invited by the committee members. That's what you call a 'cheerleading session.'" *Id.* He added that "[n]utrition, which accounts for almost [seventy] percent of that spending, was the subject of only five hearings—three of them focusing on food delivery problems on Indian reservations, one on food safety and one scrutinizing recipients of food assistance." *Id.* The lack of useful information placed in front of our legislators, given the great importance of the next farm bill is remarkable. As a large portion of Americans are calling for the government to reign in its spending, the farm bill hearings appear to be doing little to display that the federal government is serious about finding meaningful cuts to curb the wasteful spending.

128. See Dorning, *supra* note 114 (commenting on the relationship between legislators and the farm lobby).

129. See *States Receiving Commodity Payments, 1995-2011*, ENVTL. WORKING GRP., <http://farm.ewg.org/progdetail.php?fips=00000&progcode=totalfarm&page=states&region-name=theUnitedStates> (last visited Sept. 26, 2012) (ranking states by farming subsidies received 1995–2010).

130. See Dorning, *supra* note 114 (discussing the importance of farm votes in swing states).

131. See generally HURT, *supra* note 65 (showing that candidates from Eisenhower to Clinton favored subsidies).

132. See generally *id.* (showing that many candidates have endorsed subsidies).

position on ethanol subsidies—which are very important to a large number of farmers—Gore stated, “‘One of the reasons I made that mistake is that I paid particular attention to the farmers . . . and I had a certain fondness for the farmers in the state of Iowa because I was about to run for president.’”<sup>133</sup> While admirable for its candid nature, this quote succinctly states a major problem facing meaningful change within American politics: at the highest level, candidates are willing to say and do things so long as they sound good to voters. The result is that most peoples’ top choice for the highest office in the land has spoken out publicly in favor of farm subsidies.<sup>134</sup> The candidates talk of the hard working farmer, the dedication, and sacrifice they display to ensure that food reaches every American table. This free marketing, coming from very persuasive individuals, most certainly influences many peoples’ opinions of the need and use of farm subsidies. There was little difference in the 2012 presidential election, with both candidates trumpeting their policies as being the most beneficial for farmers despite the fact that there was little distinguishing between them.<sup>135</sup>

### C. Corporate Interests and the Capital Intensive Nature of Farming

Another factor that influences the current system of agricultural subsidies is the capital-intensive nature of farming.<sup>136</sup> Though the total number of American farmers has steadily declined over the years, legislation has continued to be more and more generous to the agricultural sector.<sup>137</sup> While this might seem counterintuitive, the reality is that agricultural financial interests represent far more than farmers and ranchers. Farmers have become a useful “conduit” of subsidized income to other industries whose political clout, combined with the factors cited above, create a powerful structure.<sup>138</sup>

A quick look at the different faces in the farm lobby playhouse reveals that oil companies, migrant worker organizations, retail outlets, machin-

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133. Deimer, *supra* note 110. Gore’s statements explain how farm subsidies are given a boost every four years when presidential candidates practically set up a second residency in Iowa, the first caucus in the nation. *Id.*

134. See generally HURT, *supra* note 65 (showing that candidates from Eisenhower to Clinton favored subsidies).

135. Sara Wyant, *Obama’s Farm Bill Proposals Compared to Romney’s Approach*, ABERDEEN NEWS (Aug. 24, 2012), [http://articles.aberdeennews.com/2012-08-24/farmforum/33373582\\_1\\_farm-bill-programs-that-benefit-farmers-farm-safety](http://articles.aberdeennews.com/2012-08-24/farmforum/33373582_1_farm-bill-programs-that-benefit-farmers-farm-safety) (explaining that the differences between Obama’s and Romney’s stances on farm programs are attenuated at best).

136. See MANNING, *supra* note 91, at 96 (asserting that there is a multilayered and intricate industrial complex that revolves around the farming industry).

137. *Id.*

138. *Id.* at 96–97.

ists, and even chemists are all present.<sup>139</sup> Farms need equipment, namely tractors (which require a tremendous amount of gasoline), a substantial amount of processing to take raw products to market, as well as a large amount of labor, and the list goes on and on.<sup>140</sup> In his excellent law review article, *Deregulation: Constructing Agricultural Policy in the Age of "Freedom to Farm,"* John Lauck argues that deregulation combined with the integrated business structure of agricultural industry, has also led to a type of linear system that has farmers working as "wage slaves" for big businesses.<sup>141</sup> This bodes well for those seeking to perpetuate the current subsidized policy. When we consider the vast amount of interests at stake in every new farm bill, it becomes more apparent why change continues to elude farm legislation.

Many Americans are ignorant to the existence of the farm bill, let alone that billions of their tax dollars are spent every year on farm subsidies. This lack of information combined with the far reaching effects of lobbyists, politicians, and other corporate players produces a favorable environment for those who wish to extend this outdated policy. For someone who is unfamiliar with agriculture policy and the history of subsidized farming, it is understandable how the following lines, taken from a lobbyist's website, might lead one to believe that American farmers are victims to a lack of change:

Agricultural businesses need to push for legislative reforms that enable them to survive and thrive, which subsequently keeps [sic] more people employed. They need to educate policy makers as to the reality of today's agricultural business environment and how it differs from decades ago when the current policies were first ratified.<sup>142</sup>

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139. See *id.* at 96 (stating that "just as industrialization allowed farming to conquer a new land base, it allowed farming to cross political sectors as well.").

140. *Id.*; see also ANDY PRESSMAN, EQUIPMENT AND TOOLS FOR SMALL-SCALE INTENSIVE CROP PRODUCTION (2011) (describing tractor uses on a farm); R.K. KOELSCH, GEAR-UP AND THROTTLE-DOWN TO SAVE FUEL (1978), available at [www.wvu.edu/~exten/infores/pubs/ageng/pm18-3n.pdf](http://www.wvu.edu/~exten/infores/pubs/ageng/pm18-3n.pdf) (describing the amount of fuel used per hour by a 100 horsepower tractor).

141. See Lauck, *supra* note 36, at 41–42 (stating "[b]y deregulating agricultural prices, Congress left many farmers with stark choices about the marketing of their goods. Many farmers now feel compelled to become part of an integrated production system in which they operate under contract large processing entities" and pointing out the "imagery is often feudal, with independent farmers being forced into peasant servitude, losing their craft, and sacrificing a life of dignified work."); see also Andrea Blum, *Organic Farming's Labor Problem*, COMMON GROUND (Feb. 6, 2006, 1:27 AM), [www.columbia.org/pdf\\_files/cainstitute/forruralstudies.pdf](http://www.columbia.org/pdf_files/cainstitute/forruralstudies.pdf) (describing the amount of workers used by large farming corporations).

142. *Farm Bill: With Clock Ticking Proposals Begin to Surface*, CANSLER CONSULTING, <http://canslerconsulting.com/news/same-ole-farm-bill/> (last visited Sept. 23, 2012). It must be noted that lobbyists play an important role in creating efficient communications



This advertisement intends to convince people that more subsidies are needed and more government assistance is required to support the average American farmer—not the large agri-business clients it represents.

Between the farm lobby, politicians, and powerful industry allies, agricultural subsidies remain very much a part of American agricultural policy. These forces combine to create a hugely influential body that seeks the longevity of subsidized agriculture. Not only is the policy outdated, but also it comes at a great expense to American taxpayers.<sup>143</sup> For many opponents of the current system however, the travesty of American farm subsidies is ultimately revealed when we look at the contemporary benefactors of the billions and billions of dollars paid out each year.

#### V. BENEFITTING BIG BUSINESS & BAD POLICY: THE CONSEQUENCES OF U.S. FARM SUBSIDIES

*“The subsidies to junk food ingredients could buy each taxpayer twenty-one Twinkies per year. In comparison, the yearly subsidies for apples could buy each taxpayer just half of one Red Delicious apple.”<sup>144</sup>*

##### A. Big Business Wins Again

Only a few years removed from the coining of the phrase “too big to fail” and the housing crisis created by systemic greed and corruption, we find ourselves continuing to deal with the effects of the great recession. When people take a peek behind the curtain to see who benefits from billions of dollars of U.S. farm subsidies, few are happy with what they see. It is not hard to draw a moral connection between the corporate greed that led the U.S. economy to the brink of disaster,<sup>145</sup> and the corporate welfare recipients taking in ridiculous amounts of subsidized assistance on top of huge profits. The thought of paying multi-million dollar companies taxpayer based subsidies simply because their predecessors on the land were given assistance is astounding. The term “wasteful-spending” seems to be lacking in descriptive sufficiency in a situation as fraught

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with legislators. Furthermore, many lobbying firms work on behalf of necessary policy improvements. The other side, however, is that many lobbying firms work solely to perpetuate dated policies to the benefit of their clients—this is a large portion of the farm lobby.

143. CHRIS EDWARDS & SALLIE JAMES, CATO HANDBOOK FOR POLICYMAKERS 193 (Cato Institute, 7th ed.).

144. Mackenzie Fuentes, *Congress Needs to Overhaul Farm Bill to Cut Out Big Ag's Pork*, NEWS TRIBUNE, Sept. 20, 2012, <http://www.thenewstribune.com/2012/09/20/2303093/congress-needs-to-overhaul-farm.html>.

145. See generally MICHAEL LEWIS, THE BIG SHORT (2010) (examining the events leading up to The Great Recession).

with greed and deception as this.<sup>146</sup> We have seen some of the forces driving a continuation of such an outdated agricultural policy, but now we turn our gaze to the real-life benefactors of farm subsidies. Noted author Brian Riedl captured this rather succinctly when he stated that “[u]nder this mistargeted system, agriculture policy has become America’s largest corporate welfare program.”<sup>147</sup>

With certain subsidy programs the problem is realized by the methods some corporations use to manipulate the system.<sup>148</sup> A major subsidy program that benefits those with deep pockets bases the payments on the historical productivity of the land, not farm production.<sup>149</sup> This method necessarily benefits the landowner, not the farmer.<sup>150</sup> Essentially, the land itself is given an economic value, completely separate from the land’s actual ability to produce crops.<sup>151</sup> As one commentator aptly stated, “[i]t’s the equivalent of a Texas oil well that guarantees the owner money year in and year out.”<sup>152</sup> Today, investors and corporations purchase farmland based on the subsidy applied to that land and use the payments from the government to generate fixed income.<sup>153</sup> Because the current subsidy system distorts land values and bases payments on historical production, it has become financially impossible for many small farm-

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146. See Oil Change Int’l, *Capitol Spill Background*, THE PRICE OF OIL, <http://price-fofoil.org/fossil-fuel-subsidies/> (last visited Sept. 23, 2012) (estimating that the dollar amount of oil subsidies are between \$10 billion and \$52 billion).

147. Brian Riedl, *How Farm Subsidies Became America’s Largest Corporate Welfare Program*, THE HERITAGE FOUND. (Feb. 25, 2002), <http://www.heritage.org/research/reports/2002/02/farm-subsidies-are-americas-largest-corporate-welfare-program>.

148. See David Moberg, *Whose Subsidy Is It Anyway?*, IN THESE TIMES (June 4, 2007), available at [http://www.inthesetimes.com/article/3190/whose\\_subsidy\\_is\\_it\\_anyway/](http://www.inthesetimes.com/article/3190/whose_subsidy_is_it_anyway/) (examining the relationship between farmers and “Big Ag,” and providing a history of the farm bill and thoughts on the future of subsidies and agriculture in the United States).

149. Ken Foskett, *Farm Fiasco: Billions in Aid Ripe for Abuse; International Impact Probed*, ATLANTA J.-CONST., March/April 2007, at 19, 21.

Congress imposed tougher payment limits in the 1980s in response to a public backlash against farmers receiving million-dollar payments. At first reading, the laws appear to limit individual farmers to \$180,000 per year. But, in practice, the law contains numerous loopholes and other mechanisms that permit farmers to collect as much as they want.

The principal culprit is the so-called three-entity rule, which allows one farmer to collect subsidies through as many as three “entities.” The law has permitted farmers to organize and reorganize the structure of their operations to keep receiving more subsidies.

*Id.* at 22.

150. Foskett, *supra* note 149.

151. *Id.*

152. *Id.*

153. *Id.*

ers to purchase land of their own.<sup>154</sup> The outcome is that “[t]he big get bigger, and the little guys, the ones federal subsidy dollars are supposed to protect” get kicked out of the system completely.<sup>155</sup>

With other programs, big business is expressly advanced by the very aim of the subsidy. The term “corporate welfare” seems rather appropriate for the nearly billion dollars spent each year to promote industrial agriculture products, including McDonald’s Chicken McNuggets and the Pillsbury Doughboy line.<sup>156</sup> The companies that make billions of dollars in profit each year<sup>157</sup> are the ones receiving governmental support to market their products. This does not promote agriculture. More importantly, this does not advance the interests of the American people.

Given the sheer volume of subsidies and various programs, farm policy can be difficult to understand. This complexity is convenient for the “small group of lawmakers and interest groups who specialize in the details” as it insulates the entire process.<sup>158</sup> The following provides a very basic overview of one form of eligibility:

154. *Id.*; see *Kernal Watch: 9 Farm Subsidy Myths*, ENV’T WORKING GRP. (Aug. 18, 2011), <http://www.ewg.org/agmag/2011/08/kernel-watch-9-farm-subsidy-myths/> (quoting the Center for Rural Affairs to show that farm subsidies do not help small farmers); see also Elisha Greeley Smith, *There is More to The Farm Bill Than Farming*, CTR. FOR RURAL AFFAIRS (Jan. 8, 2007), [http://www.cfra.org/news\\_media/releases?page=37](http://www.cfra.org/news_media/releases?page=37) (asserting that farm subsidies are “driving up land costs and driving smaller farm operations out of business.”).

155. Foskett, *supra* note 149.

156. See THE FATAL HARVEST READER: THE TRAGEDY OF INDUSTRIAL AGRICULTURE 18 (Andrew Kimbrell ed., 2002) (showing the breakdown of figures for both companies).

157. See *id.* (explaining how the subsidies add up to close to three billion dollars as costs to foods for consumers); *McDonald’s Corp. (MCD) Profitability Analysis*, STOCK ANALYSIS ON NET, <http://www.stock-analysis-on.net/NYSE/Company/McDonalds-Corp/Ratios/Profitability> (last visited Sept. 17, 2012) (providing profit data for McDonald’s, showing billions in profit for the year 2011); *General Mills Reports Fiscal 2011 Results*, GENERALMILLS, [http://www.generalmills.com/Media/NewsReleases/Library/2011/June/earnings\\_4\\_q\\_f11.aspx](http://www.generalmills.com/Media/NewsReleases/Library/2011/June/earnings_4_q_f11.aspx) (last visited Sept. 17, 2012) (providing profit figures for Pillsbury as General Mills in 2011); see also *General Mills to Buy Pillsbury*, ABC NEWS, <http://abcnews.go.com/Business/story?id=89651&page=1> (last visited Sept. 17, 2012) (announcing that General Mills will buy Pillsbury); *75 Years–Innovation, Invention, Food & Fun: Across the Years*, GENERALMILLS, [http://www.generalmills.com/~media/Files/history/hist\\_timeline.ashx](http://www.generalmills.com/~media/Files/history/hist_timeline.ashx) (last visited Sept. 17, 2012) (indicating that Pillsbury merged with General Mills in 2001). See, e.g., *Fortune 500*, CNN MONEY (May 21, 2012), [http://money.cnn.com/magazines/fortune/fortune500/2012/full\\_list/101\\_200.html](http://money.cnn.com/magazines/fortune/fortune500/2012/full_list/101_200.html) (citing McDonald’s profits for 2012 as \$5.5 billion).

158. Riedl, *supra* note 147. The problem is greatly magnified by lawmakers’ personal interests in federal farm subsidies. EWG states that “based on a recent analysis of the Environmental Working Group’s Farm Subsidy Database, that 23 of them, or their family members, signed up for taxpayer-funded farm subsidy payments between 1995 and 2009.” Don Carr, *Cut my Spending, But not my Farm Subsidies!*, ENVTL. WORKING GRP. (Mar.

Subsidy eligibility is based on the crop. More than 90 percent of all subsidies go to just five crops—wheat, cotton, corn, soybeans, and rice—while the vast majority of crops are ineligible for subsidies. Once eligibility is established, subsidies are paid per amount of the crop produced, so the largest farms automatically receive the largest checks.<sup>159</sup>

Though “[f]arm subsidies are promoted as helping struggling farmers . . . Washington could guarantee every full-time farmer an income of nearly \$40,000 for just \$4 billion annually.”<sup>160</sup> The reality is that the vast majority of subsidies are distributed to large commercial farms.<sup>161</sup> Spanning over a sixteen-year period from 1995 to 2011, the top 10% of subsidy recipients received \$37,555 per year while the bottom 80% received only \$1,858 per year.<sup>162</sup> As New York Times farm policy writer Ron Nixon put it, “These programs are like vampires, you just can’t kill them . . . Just when you think they are dead, they manage to rise up.”<sup>163</sup> For many people disgusted at the perpetual abuse of subsidized agriculture, this statement sums it up.

*B. More Than Just Unfair: Other Harmful Consequences of Big Business Driving Agricultural Policy*

America’s agricultural policy favors those with deep pockets and a focus on the bottom line to the detriment of those who were originally intended to receive governmental assistance—the small farmer. While this problem alone demands an updated policy focused on assistance for those who need it and not for those who utilize subsidies to increase their tre-

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29, 2011), <http://www.ewg.org/agmag/2011/03/farm-subsidies-paid-to-the-members-of-the-112th-congress/> (pointing out that “[t]he current salary for rank-and-file members of the House and Senate is \$174,000 per year . . . [but] members of Congress who receive farm subsidies are part of a system that cries out for reform.”).

159. Riedl, *supra* note 147.

160. *Id.* Riedl went on to state:

Farm policy is supposed to help farmers recover income lost because of low crop prices. However, farmers can increase their subsidies by planting additional acres, which increases production and drives prices down further, thereby spurring demands for even greater subsidies. In other words, [this] lowers prices. This is the policy equivalent of trying to use gasoline to extinguish a fire.

*Id.*

161. *Id.* As of 2007 these farms had “an average household income of \$199,975 and a net worth of just under \$2 million.” *Id.*

162. See 2011 Farm Subsidy Database, *supra* note 99 (last visited Sept. 17, 2012) (providing figures concerning subsidy payouts in 2011).

163. Ron Nixon, *Politics Gives Some US Subsidy Programs Staying Power*, N.Y. TIMES, July 14, 2011, <http://www.nytimes.com/2011/07/15/us/politics/15spend.html?page-wanted=all>.

mendous profits, the consequences of allowing big business to shape the current policy is astounding. There are a number of negative effects from subsidizing large corporations to grow and process America's food. These consequences affect most Americans on a daily basis, sometimes several times a day, often without people even knowing they are acting, buying, or protesting in direct response to the nation's farm policy. America's farm policy has allowed large corporations to successfully argue that efficiency and profitability, as in other sectors, reign supreme. The result is a national identity crisis of how to feed and care for ourselves and our nation's natural resources. Of particular consequence from promoting large agri-business over the traditional small farmer, are health related effects, the environmental impact, and illegal immigration.

### 1. Health Related Risks

The way agriculture subsidies are employed, certain crops are rewarded more than others. The outcome is that we now subsidize cheap, unhealthy foods while not allowing for subsidized growth of healthier fruits and vegetables.<sup>164</sup> The effects of this backwards policy are tremendous. Our nation is facing a severe obesity disorder of a magnitude never before experienced in history.<sup>165</sup> Approximately one-third of Americans are overweight<sup>166</sup> and we are compounding the problem by incentivizing cheap, unhealthy foods.<sup>167</sup> Big agri-businesses continue to receive higher

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164. THE FATAL HARVEST READER, *supra* note 156, at 113. "Consequently, people are consuming more calories, preservatives, and sugar than ever in history, while reducing their intake of fresh whole fruits and vegetables." *Id.*

165. *Id.* Along with this problem comes an incredible increase in incidences of Type II diabetes, high blood pressure, heart disease, and many other conditions. *Id.* "The Surgeon General has determined that two out of every three premature deaths is related to diet." *Id.*

166. *Id.*

167. *Id.* See also Marlene B. Schwartz & Kelly D. Brownell, *Actions Necessary to Prevent Childhood Obesity: Creating the Climate for Change*, 35 J.L. MED. & ETHICS 78, 80 (2007) (laying out the factors that influence consumption). The toxic food environment is driven by heavy advertising for convenient and abundant fast food, heavy subsidies for less nutritious foods, greater expense for healthy products, and communities and lifestyles that create little unplanned opportunities for physical activity. *Id.* Indeed, perpetuating the confusing nature of American policy, the government manifests a desire to address the obesity epidemic each session through the introduction of legislation. IMPACT Act, S. 1325, 109th Cong. § 2 (6)-(7), (16) (as referred to S. Comm. on Health, Educ., Labor & Pensions, June 28, 2005). This Act identifies that the Center for Disease Control attributes over 365,000 deaths a year to diseases and complications arising from being overweight or obese. *Id.* § 2(6). These deaths are the result of several diseases commonly caused by problems with excessive weight, including heart disease, cancer, and diabetes, the first, second, and sixth leading causes of death in the United States respectively. *Id.* People who are overweight or obese are fifty to one hundred percent more likely to die prema-

and higher profit margins, while most conscious Americans often find themselves forced to choose between cheap, subsidized foods and healthy, unsubsidized foods.<sup>168</sup> In the hugely popular documentary film, *Food Inc.*, author Michael Polan asks,

Why is it that you can get a Cheeseburger at McDonald's for \$.99 cents, and you can't even get a head of broccoli for \$.99 cents? We've skewed our food system to the bad calories, and it's not an accident. The reason that those calories are cheaper is because those are the ones that are heavily subsidized.<sup>169</sup>

It seems counterintuitive that the government subsidizes products used for unhealthy foods on one hand, but on the other hand requires mandatory, albeit weak, healthfulness standards for student lunches<sup>170</sup> and nutritional labeling for better informed decisions.<sup>171</sup>

turely. *Id.* § 2(7). In addition to physical ailments, eating disorders often have severe psychological repercussions including depression, drug use, and suicidal thoughts. *Id.* § 2(16).

168. THE FATAL HARVEST READER, *supra* note 156, at 113–14.

169. FOOD, INC. (Magnolia Pictures 2008).

170. See Ellen Fried & Michele Simon, *The Competitive Food Conundrum: Can Government Regulations Improve School Food?*, 56 DUKE L.J. 1491, 1492–93 (2007) (providing facts about the National School Lunch Program).

The National School Lunch Program . . . serves twenty-nine million school children every day . . . to provide purportedly 'nutritionally balanced' meals. Many students, however, fill up on items such as soft drinks, chips, and cookies, which are low in nutrition . . . such 'junk foods' sold in vending machines, cafeteria à la carte lines, and school stores are known as 'competitive foods' because they compete with federally funded meals. Although NSLP meals are required to meet nutritional standards based upon recommendation from the [U.S.]Department of Agriculture (USDA) Dietary Guides for Americans . . . competitive foods are not.

*Id.* See also Marlene B. Schwartz & Kelly D. Brownell, *Actions Necessary to Prevent Childhood Obesity: Creating the Climate for Change*, 35 J.L. MED. & ETHICS 78, 79 (2007) (discussing the importance of shifting the focus to the toxic food environment America has created). The way we frame the issue when discussing the overweight and obesity crisis is critical in determining what changes we will have the societal and political will to make. *Id.* Historically, weight has been framed as an issue of personal responsibility because it was strictly the result of personal choices that caused a person to become overweight or obese. *Id.* Today, we need to push to frame the epidemic as spurred by a toxic environment such that even though we are deciding what to eat and how much activity to engage in our choices have been heavily influenced by the environment in which we live. *Id.* But see Ana C. Lindsay et al., *The Role of Parents in Preventing Childhood Obesity*, 16 FUTURE OF CHILDREN 169, 170 (2006), available at [http://futureofchildren.org/publications/journals/journal\\_details/index.xml?journalid=36](http://futureofchildren.org/publications/journals/journal_details/index.xml?journalid=36) (explaining that schools alone cannot turn back the obesity tide). Parents play a critical role in the development of good eating and exercise habits for their children. *Id.*

171. See Devon E. Winkles, *Weighing the Value of Information: Why the Federal Government Should Require Nutrition Labeling for Food Served in Restaurants*, 59 EMORY L.J. 549 (2009) (giving "nutrition information to consumers is one strategy that has been implemented, most notably in the Nutritional Labeling and Education Act of 1990.").

Continuing the same policies will only allow for a more severe health problem in America. The current public policy of the United States “encourages obesity at the expense of sound nutritional practices [by] compel[ling] farmers to ignore other crops such as fruits, vegetables, and other grains.”<sup>172</sup> Moreover, the higher cost associated with these unsubsidized, yet healthier foods, puts them financially beyond the reach of low-income Americans—a growing segment of our adult and youth population.<sup>173</sup> Giving advantages to unhealthy products has tremendous long-term economic and social costs, but in the short-term, the advantages perpetuate a system whereby the big companies are allowed a higher profit margin and the average American is left with a hard choice and the bill.

## 2. Environmental Issues

In addition to the negative impact on physical health, America’s policy of subsidizing the same land and the same crops without a recalibration for a changing world is having terrible effects on the nation’s vital natural resources.<sup>174</sup> The environmental impact that follows farm subsidies is both startling and unnecessary. One author summarized the current environmental concerns stemming from large scale farming in the following way:

Rather than consisting of rural communities of similarly sized crop-diverse farms like those that existed prior to the 1950s, American agriculture is today an industrialized system whereby water, chemicals, and fossil fuels are converted into cheap commodity crops. Not coincidentally, the most significant environmental impacts from industrial commodity crop agriculture are impacts to the water, land, wildlife, and air derived from agriculture’s heavy dependence on inputs that affect these facets of the environment.<sup>175</sup>

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172. Scott Fields, *The Fat of the Land: Do Agricultural Subsidies Foster Poor Health?*, 112 ENVTL. HEALTH PERSPECTIVES A821, A821 (2004), available at <http://www.medscape.com/viewarticle/491630>.

173. See Shiriki Kumanyika & Sonya Grier, *Targeting Interventions for Ethnic Minority and Low-Income Populations*, 16 FUTURE OF CHILDREN 187, 189 (2006), available at [http://futureofchildren.org/publications/journals/journal\\_details/index.xml?journalid=36](http://futureofchildren.org/publications/journals/journal_details/index.xml?journalid=36) (explaining that the high cost of healthier foods makes it difficult for low-income families to purchase them, and consequently, they are under stocked in grocery stores located in lower income neighborhoods).

174. See Eubanks, *supra* note 74, at 241–43 (explaining the impact America’s farm policy has had on degrading the country’s natural resources).

175. *Id.* at 252; see also MANNING, *supra* note 91, at 98 (asserting that the effects of industrial agriculture are wide ranging “from pesticide pollution to freshwater depletion, energy consumption, erosion, and salinization.”); *Industrial Polluting Agriculture: The Problem*, GREENPEACE, <http://www.greenpeace.org/international/en/campaigns/agriculture/problem/> (last visited Sept. 17, 2012) (explaining the environmental impact).

Misguided agricultural policies have resulted in “increased farming on marginal lands, which inherently leads to high levels of soil erosion.”<sup>176</sup> Soil erosion, may not sound like an alarming issue, but its effects are potentially devastating.

Because the farm bill promotes “maximum production of commodity crops, many farmers grow corn and other subsidized annual crops without rotating in a valuable mix of non-commodity crops and perennials that can bolster the health of the land by returning critical nutrients to the soil and preventing erosion.”<sup>177</sup> The competition for profitability that the farm bill creates “forces farmers to cultivate their fields without opting for fallow seasons to rest the fields. In a matter of years, these devastating practices can render once profitable cropland completely worthless.”<sup>178</sup>

It might make sense in the short term, but once again, we will all pay the price in the long term. Corporate farms continue to lobby against EPA-suggested regulations, claiming that it will hurt the industry. This is both a short sighted and dangerous position to hold.<sup>179</sup> A time will come

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Agriculture is responsible for 14[%] of the total global greenhouse gas emissions. Ecological farming can help reduce these emissions, and help farmers cope with climate change. Genetic Engineering makes us dependent on toxic chemicals and corporate control of agriculture. It poses unknown risks to our environment and ourselves. Groundwater contamination, fewer places to fish and more pests resistant to pesticides: These are just some of the problems arising from industrial polluting agriculture's addiction to toxic chemicals. Ecological farming can produce 30[%] more food per hectare. Ecological farming gives people access to food where it is needed most.

*Id.*

176. See Eubanks, *supra* note 74, at 261 (asserting the negative impact of “increased farming on marginal lands, which inherently leads to high levels of soil erosion.”).

177. See *id.* at 262 (recognizing the detrimental effect of growing solely commodity crops).

178. See *id.* (emphasizing the significant agricultural cost of forcing farmers to constantly require production from their fields).

179. Steve Pearlstein, *For the Farm Lobby, Too Much is Never Enough*, WASH. POST, June 26, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/06/25/AR2009062504133.html>. Pearlstein offered the following example of this short-sighted position:

It seems those pesky scientists over at the EPA had done a preliminary analysis showing that if you considered the indirect effects of producing a lot of additional corn-based ethanol—like the need to make up for the lost food production somewhere else—then ethanol might not qualify as a carbon-reducing “renewable fuel” under the 2007 energy bill, potentially jeopardizing ethanol's guaranteed market of 15 billion gallons a year. To rectify this gross injustice, Elmer demanded—and won—a five-year moratorium on any final determination while a study is conducted on how the EPA was conducting its study.

All of these concessions were hammered out last weekend among Collin Peterson, chairman of the House Agriculture Committee, and fellow Democrats Henry Waxman and Ed Markey, the chief sponsors of the climate-change bill. The House leadership



very soon when change must be forced upon these industrial giants or we will have severe problems at hand.

### 3. Effect on Immigration

The effects of an outdated agriculture policy reach even beyond our borders. Currently there is a major push to stem illegal immigration from Mexico. Recent legislation in Arizona<sup>180</sup> and Alabama<sup>181</sup> pushed the limits of the law—some say too far—in an effort to curb immigration in their states. There are multiple reasons why immigrants seek new lives in the United States,<sup>182</sup> but few would think that America's farming policy is, in fact, a large factor.<sup>183</sup>

Many of the illegal immigrants coming to America were corn farmers in Mexico. NAFTA led to a flooding of the Mexican market with cheap American corn. It's put more than a million and a half Mexican farmers out of work. They couldn't compete with this cheap corn coming from America.<sup>184</sup>

Big meat packers began marketing in Mexico to get workers to come into the United States and work for the packing plants.<sup>185</sup> For years the

and the White House acquiesced; the press conference was duly held. And what was the result?

Bob Stallman, president of the American Farm Bureau Federation and the self-proclaimed "voice of agriculture," yesterday urged all House members to vote against the climate-change bill, claiming it would "result in a net economic cost to farmers with little or no environmental benefit.

*Id.* The sad truth is that most people do not pay close attention to these major decisions because the results of these policies are down the road and either they chose to tune these issues out, or the media fails to convey the potential catastrophic consequences of these policies, or both.

180. See Randal C. Archibold, *Arizona Enacts Stringent Law on Immigration*, N.Y. TIMES, April 23, 2010, <http://www.nytimes.com/2010/04/24/us/politics/24immig.html> (explaining recent Arizona immigration legislation).

181. See *U.S. Makes Case Against Alabama's Immigration Law*, CNN, Nov. 15, 2011, [http://articles.cnn.com/2011-11-15/us/us\\_alabama-immigration-law\\_1\\_immigration-law-immigration-status-alabama-law?\\_s=PM:US](http://articles.cnn.com/2011-11-15/us/us_alabama-immigration-law_1_immigration-law-immigration-status-alabama-law?_s=PM:US) (explaining that the Alabama law is unconstitutional, requiring the U.S. Department of Justice to file a brief which requests that the 11th U.S. Circuit Court block six parts of the law).

182. See *Immigration—Factors, Rules and Barriers*, TEPLEN IMMIGRATION BLOG (May 3, 2010, 6:08 AM), <http://www.teplenimmigrationblog.com/immigration-factors-rules-and-barriers> (listing push and pull factors which form the basis of immigration theory).

183. See *id.* (failing to mention anything about the impact of America's farm policy on immigration).

184. FOOD, INC. (Magnolia Pictures 2008).

185. *Id.*

government did not enforce penalties against these big companies.<sup>186</sup> Now that there is an anti-immigrant movement, the government—while still turning a cheek to big companies—is cracking down on workers.<sup>187</sup> Once again, big business is able to take advantage of a system that allows for large profits with cheap labor and subsidized assistance without any meaningful consequence.<sup>188</sup> “The increase in trade that NAFTA generated has not translated into more jobs for Mexicans at home. In fact, NAFTA may have resulted in structural changes that encourage more labor migration from Mexico.”<sup>189</sup>

Outdated and misguided subsidy policies continue to have negative effects on the nation’s health, environment, and immigration.<sup>190</sup> Additionally, many would argue that the costs associated with these subsidies are far greater than any possible benefit they provide. The problems generated from agricultural subsidies are only beginning. There are other serious consequences from these policies. Corporate-led agriculture companies, buoyed by government subsidies, have led the charge for genetically modified organisms (GMO), which many farmers, scientists, and citizens fear will have disastrous results.<sup>191</sup> They argue that utilizing a single genetic strain of a particular crop offers no protection against disease and thus puts our food supply at risk.<sup>192</sup> In the fifteen plus years that GMO foods have been available, “the industry has not released one product that benefits consumers.”<sup>193</sup> The items that have had commercial success “are used exclusively by commodity farmers, who for the

186. *Id.* A portion of the film highlights the work of an individual whose primary objective is to inform immigrants of their rights, while also combating what he feels are the big farm companies’ greedy, selfish methods. While his work is critical to many people each year, he is only able to assist a tiny fraction of those who actually need protection from large companies who lure them in, then turn them away when the immigration debate becomes too much of a distraction.

187. *Id.*

188. *See id.* (highlighting the work of an individual whose primary objective is to inform immigrants of their rights, while also combating what he feels is the greedy, selfish methods used by the big farm companies).

189. Bill Ong Hing, *Nafta, Globalization, and Mexican Migrants*, 5 J.L. ECON. & POL’Y 87, 97 (2009) (discussing how Mexican workers enter the United States for work, their impact on both the Mexican and the U.S. economy, NAFTA, and the effect of current immigration legislation and ideas for reform).

190. *See id.* (discussing how Mexican workers enter the United States for work, their impact on both the Mexican and the U.S. economy, NAFTA, and the effect of current immigration legislation and ideas for reform); *see also* Eubanks, *supra* note 74, at 251–52 (explaining that there are a multitude of effects of industrial agriculture).

191. CLAIRE HOPE CUMMINGS, *UNCERTAIN PERIL: GENETIC ENGINEERING AND THE FUTURE OF SEEDS* 26 (2008).

192. *Id.*

193. *Id.* But *see*, ROBERT PAARLBERG, *STARVED FOR SCIENCE: HOW BIOTECHNOLOGY IS BEING KEPT OUT OF AFRICA* 1–3 (2008) (claiming that rich countries’ problems

most part are dependent on government subsidies to make ends meet.”<sup>194</sup> Additionally, even though we are the richest country in the world, we have “forgotten really what farming is and what it is for.”<sup>195</sup> We have lost the importance of food and its ability to bring together a community,<sup>196</sup> instead we act as if it is just a commodity for someone’s profit. The failed policies and lingering inaction have resulted in a political stalemate. As a result of this stalemate, on September 30, 2012, the farm bill expired.<sup>197</sup> The way forward is both uncertain and perilous, but it is also an opportunity for change.

## VI. WHERE ARE WE NOW?

*“Some way, somehow we need to get a five year farm bill passed . . . [t]here are an awful lot of farmers and ranchers and their lenders out there now who are sort of in financial purgatory.”*<sup>198</sup>

### A. A Positive Sign?

While there are tremendously powerful interests working to perpetuate the current policy, there are a growing number of forces pushing back against an outdated and misdirected system. Unfortunately, it has taken a major downturn in the U.S. economy to place a larger focus on the problems inherent in a system that rewards big business at the expense of small farms and the American taxpayer. Throughout 2011 the congressional “Super Committee” met to determine specific cuts to federal spending.<sup>199</sup> There has been a dramatic increase in media coverage and public discourse on wasteful government spending.<sup>200</sup> Though there are

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with and opposition to GMO’s do not warrant keeping science out of the hands of poor countries who could benefit from its advances).

194. CUMMINGS, *supra* note 191.

195. VICTOR DAVIS HANSON, *THE LAND WAS EVERYTHING: LETTERS FROM AN AMERICAN FARMER* 196 (2000).

196. Kate Meals, *Nurturing the Seeds of Food Justice: Unearthing the Impact of Institutionalized Racism on Access to Healthy Food in Urban African-American Communities*, 15 SCHOLAR 97 (2012).

197. Daniel Imhoff, *The Farm Bill Matters*, THE DAILY REPUBLIC, Nov. 9, 2012, <http://www.mitchellrepublic.com/event/article/id/72328/group/homepage/>

198. David Rogers, *Farm Bill has a Shot*, POLITICO, Nov. 15, 2012, <http://www.politico.com/news/stories/1112/83934.html>.

199. See Lisa Mascaro, *Deficit ‘Super Committee’ Will Probably Pass the Buck to Voters*, L.A. TIMES, Nov. 18, 2011, <http://articles.latimes.com/2011/nov/18/nation/la-na-super-committee-fail-20111119> (stating that “[t]he bipartisan panel plans to keep meeting over the weekend as it searches for a deal, but its 14-week effort to negotiate a long-term plan to reduce deficits by \$1.5 trillion increasingly seems headed toward a fizzle.”).

200. See generally *Government Waste: 20 of the Craziest Things That the U.S. Government is Spending Money On*, THE ECON. COLLAPSE, <http://theeconomiccollapseblog.com/>

multiple opinions regarding which programs should be discarded and which policies make the most sense, most people, who perhaps are paying closer attention than before, agree that government spending should be cut back in certain areas.

While unemployment remains disappointingly high, and a great deal more are underemployed,<sup>201</sup> learning that millionaires are receiving government assistance does not sit well with the average citizen. The increased attention on government spending and the wasteful programs it supports has placed the farm lobby and their many allies in a challenging position. Further, the unemployment rate greatly increases the pressure on pro-subsidy legislators to justify their support for spending measures that benefit the wealthy, or simply to back off their previous position.<sup>202</sup>

Consequently, in June 2012, the U.S. Senate, in what was hopefully the beginning of a large-scale reduction in farm subsidies to wealthy corporations and individuals, voted to eliminate assistance to millionaire farmers.<sup>203</sup> “The measure, sponsored by Sen. Tom Coburn (R-Okla.), make[s] mostly symbolic changes in the way farm subsidies are distributed. At present, subsidies are denied to individuals who make more than \$1,250,000 a year.”<sup>204</sup> The Coburn amendment lower[ed] the bar by just \$250,000.”<sup>205</sup> The passage of the amendment is a positive sign, but the failure of the Congress to pass a final bill or extension means the amendment, thus far, only has a symbolic meaning. Moreover, the fact that this is a victory for opponents of subsidized assistance for big business, dem-

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archives/government-waste-20-of-the-craziest-things-that-the-u-s-government-is-spending-money-on (last visited Sept. 17, 2012) (stating that even as millions of American families are suffering because of the economic downturn the government continues to spend money on “the craziest and most frivolous things”); *Dramatic Drop in Earmarks’ Number, Cost*, CNN POLITICS (Apr. 17, 2012), [http://articles.cnn.com/2012-04-17/politics/politics\\_congress-earmarks-report\\_1\\_earmarks-congressional-pig-book-citizens-against-government-waste?\\_s=PM:POLITICS](http://articles.cnn.com/2012-04-17/politics/politics_congress-earmarks-report_1_earmarks-congressional-pig-book-citizens-against-government-waste?_s=PM:POLITICS) (stating that even though there has been a decrease in earmarks, Congress is “being creative and deceptive” in coming up with ways to get earmarks without public knowledge); Victor McGlothlin, *Governmental Watch Dogs Uncover Pork Barrel Spending*, WASTED CASH FIN. (Apr. 26, 2012), <http://www.wastedcash.com/watch-dogs-uncover-pork-barrel-spending/> (stating that while government spending has decreased the amount that is still being spent is unacceptable).

201. *Labor Force Statistics From the Current Population Survey*, BUREAU OF LAB. STAT. (Sept. 15, 2012, 3:38 PM), <http://data.bls.gov/timeseries/LNS14000000>.

202. *Senate Votes to Bar Farm Subsidies to Millionaires*, ENVTL. WORKING GRP. (Oct. 21, 2011), <http://www.ewg.org/release/senate-votes-bar-farm-subsidies-millionaires-0>.

203. Daniel Straus, *Senate Passes Coburn Amendment Closing USDA Payment Loop-hole for Millionaires*, THE HILL (June 20, 2012), <http://thehill.com/blogs/floor-action/senate/233829-senate-passes-coburn-amendment-closing-usda-payment-loop-hole-for-millionaires>.

204. *Senate Votes to Bar Farm Subsidies to Millionaires*, *supra* note 202.

205. *Id.*

onstrates that there is a long way to go to correct the misguided agricultural policy in America. However, it is encouraging that “nearly half of the members of the Senate [A]griculture [C]ommittee, traditionally the strongest supporters of farm subsidies, voted for the amendment, showing that even farm state lawmakers understand the need to impose tighter limits on farm programs.”<sup>206</sup>

B. *Missing the Chance to Change, Again?*

As the 2008 farm bill headed for expiration in the fall of 2012, the national conversation was almost completely dominated by the upcoming presidential and congressional elections. The farm lobby tried unsuccessfully to generate enough support to put together a renewal or extension. Politically, there was finger pointing from both sides of the aisle claiming that the opposition was hindering action on the bill. The Senate Agricultural Committee as well as the House Agricultural Committee both created versions of an updated farm bill—though the two versions were dramatically different.<sup>207</sup> Daniel Imhoff offered this excellent account of the failed attempts at fixing the farm bill:

[During the summer] the full Senate passed a version of the Farm Bill that seemed to move food policy, however incrementally, in a positive direction. In a series of last-minute amendments, the Senate made some modest cost cuts to . . . conservation incentives but also added stricter income and ownership rules to keep the wealthiest farming operations off the dole. It also preserved some programs crucial to boosting regional food production and sustainable agriculture—like grants to help producers market their goods locally, and programs that help get fruits and vegetables straight from farms to school cafeterias. By rejiggering some unpopular crop subsidies into a new-fangled crop insurance safety net, the Senate appeased agribusinesses. By requiring farmers to agree to conservation guidelines to enroll in the insurance program, it pleased conservationists. The House Agriculture Committee passed its own draft of the Farm Bill in July—but the House version was far less publicly minded than the Senate version. It continued to reward commodity producers—

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206. *Id.* Another sign that changes are becoming more widespread is that other western democracies that have had similar programs as the United States are beginning to move away from a strong dependency on farm subsidies. “On both sides of the Atlantic, policies have begun to move away from traditional price and income supports to those that require a return on investment. In the EU, budget pressures are pushing policymakers to shift more funds to . . . indirect investments in rural development, conservation, and research.” MORGAN, *THE FARM BILL AND BEYOND*, *supra* note 16, at 57.

207. *See* Imhoff, *supra* note 197 (discussing the frantic summer of 2012 regarding renewal of the farm bill).

growers of corn, wheat, rice, soybeans, and cotton—who are already earning record income. It quadrupled the Senate's proposed food stamp budget reduction. It hacked away at important land conservation incentive programs, which can't even keep up with demand from farmers who are eager to enroll. Riders would have done away with some of the EPA's regulatory powers and further monopolized the meatpacking industry.

It looked like the Senate's and the House's agriculture committees were headed for an ugly clash—but instead, the House completely dropped the ball. House leaders refused to schedule time to debate and vote on the Farm Bill draft that its Agriculture Committee passed in July. After more than two months of stalling, the 2008 Farm Bill expired.<sup>208</sup>

On September 30, 2012 the farm bill expired.<sup>209</sup> The ramifications of this are still somewhat unclear.<sup>210</sup> We know that certain industries, such as dairy, are already being affected by the loss of funding into certain programs.<sup>211</sup> For others, money remains, but is rapidly declining. The biggest issue facing many farmers is the potential for a disaster without any means of security. Since most experts believe that action on this issue is highly unlikely during the lame-duck session of 2012, the hope is that Congress can act quickly once the new year begins. As always, the biggest issue facing advocates of a smarter and more effective farm bill is

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208. *Id.*

209. *Id.*

210. On October 1, 2012, the day after the farm bill expired, USDA Secretary Tom Vilsak made the following statement:

Many programs and policies of the U.S. Department of Agriculture were authorized under the Food, Conservation and Energy Act of 2008 (2008 farm bill) through September 30, 2012. These include a great number of critical programs impacting millions of Americans, including programs for farm commodity and price support, conservation, research, nutrition, food safety, and agricultural trade. As of today, USDA's authority or funding to deliver many of these programs has expired, leaving USDA with far fewer tools to help strengthen American agriculture and grow a rural economy that supports 1 in 12 American jobs. Authority and funding for additional programs is set to expire in the coming months. Without action by the House of Representatives on a multi-year Food, Farm and Jobs bill, rural communities are today being asked to shoulder additional burdens and additional uncertainty in a tough time. As we continue to urge Congress to give [the] USDA more tools to grow the rural economy, [the] USDA will work hard to keep producers and farm families informed regarding those programs which are no longer available to them.

*Vilsak Makes Statement on Farm Bill Expiration*, CROPLIFE (Oct. 1, 2012), <http://www.croplife.com/article/31205/vilsack-makes-statement-on-farm-bill-expiration>.

211. See Nancy Foster, *Farm Bill Inaction Drains Milk Farmers*, UNION LEADER (Nov. 9, 2012), <http://www.unionleader.com/article/20121109/NEWS02/121109150> (discussing how the dairy industry is being hit hard by the lack of a new farm bill).

the ability to find support for comprehensive reform. Once again, however, larger issues seem to dominate the national conversation.

Indeed, the looming “fiscal cliff” posed by forced sequestration on January 1, 2013, has created a tense and uncertain future for the U.S. economy.<sup>212</sup> The reelection of President Obama to the White House and the continuation of a Republican led House ensure that compromises will have to be made to overcome this major political and economic obstacle. For the time being, the farm bill has been relegated, along with many other issues, to the background. Should Congress find common ground on the larger issues of sequestration and automatic tax increases, compromise on a reformed farm bill can certainly follow. Both sides are dug in for a fight. Some advocates have pushed for a one year extension of the 2008 funding policies to provide more time for long term solutions.<sup>213</sup> The farm lobby, not surprisingly, is pushing for the status quo to be extended indefinitely. Though time is running short for farmers, time has run for American taxpayers and for irresponsible and morally reprehensible assistance to multi-million businesses. Enough is enough. This bitter policy must end.

## VII. CONCLUSION

*“The public must decide whether it wishes to continue on the present road, and it can do so only when in full possession of the facts.”*<sup>214</sup>

### A. Legislative Reforms

Advocates of the current system, and frankly of many pro-business policies, often state that the capitalist system should allow the free market to adjust itself if needed.<sup>215</sup> Advocates argue that efficiency is not a bad thing, that profits are certainly good, and that updated science and technology should definitely be used in modern day agriculture.<sup>216</sup> They claim that the market allows purchasers to determine how important

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212. Tom Curry, *Obama Sticks to Guns on Tax Increase for Wealthiest Americans*, NBCNEWS (Nov. 9, 2012), [http://nbcpolitics.nbcnews.com/\\_news/2012/11/09/15052361-obama-sticks-to-guns-on-tax-increase-for-wealthiest-americans?lite](http://nbcpolitics.nbcnews.com/_news/2012/11/09/15052361-obama-sticks-to-guns-on-tax-increase-for-wealthiest-americans?lite).

213. Steve Ellis, *Pass a Fiscally Responsible Farm Bill Extension*, THE HILL (Nov. 8, 2012), <http://thehill.com/blogs/congress-blog/economy-a-budget/266935-pass-a-fiscally-responsible-farm-bill-extension>. “Congress must pass a one-year farm bill extension, fully paid for with modest cuts to subsidies for those who don’t need taxpayer support, while concentrating on the truly pressing issues facing the nation.” *Id.*

214. RACHEL CARSON, *SILENT SPRING* 13 (40th Anniversary ed., First Mariner Books 2002).

215. MORGAN, *THE FARM BILL AND BEYOND*, *supra* note 16, at 23–28.

216. *Id.*

green and organic farming should be.<sup>217</sup> The problem with this position is that the market, in this instance, is remarkably skewed. How can one claim that the market allows purchasers to dictate how farm goods are delivered to end users if certain products are given an unfair advantage in the form of government assistance from the outset? This fallacy allows opponents of America's farm subsidies to correctly respond that we are perpetuating a broken system by giving an unfair advantage to the very individuals that need assistance the least.

In our representative democracy there is always an opportunity for change. In a country of 300 million people, it is often difficult to effect that change quickly, but with proper support, change can be realized. America's agriculture subsidies are definitively outdated and counterintuitive. Congress should redirect their objectives in the farm bill to target those who truly need assistance and recalibrate the types of products that receive the greatest support. If future farm bills reduced the maximum income level of those receiving subsidized assistance, large corporations and wealthy individuals will be hindered from accepting taxpayer funding. While there would no doubt be accounting changes on the part of corporations to reduce balance sheet income, this process would begin the squeeze on those who should not be the benefactors of farm subsidies.

Additionally, the commodities that collect the largest amount of subsidized assistance should benefit America's farmers *and* the overall health of the nation. Championing corn<sup>218</sup> and soybeans for their broad production capabilities works to increase large corporate farming profit margins, but it does not assist American's environmental or physical health.<sup>219</sup> We should invest in healthy agriculture with long-term benefits. Congress should also "shift a fair portion of these subsidies to farmers implementing sustainable agricultural methods."<sup>220</sup>

### B. *Supporting Sustainable Agriculture*

Sustainable agriculture is another approach that would allow for a more localized farm system and a reduced reliance on massive farm subsi-

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217. *Id.*

218. Donald Carr, *Corn Subsidies Make Unhealthy Food Choices the Rational Ones*, GRIST (Sept. 22, 2010), <http://www.grist.org/article/food-2010-09-21-op-ed-corn-subsidies-make-unhealthy-food-choices>.

219. *Blame Soybean, Corn Subsidy for American Obesity*, COMMODITY ONLINE (July 23, 2009), <http://www.commodityonline.com/news/Blame-soybean-corn-subsidy-for-American-obesity-19836-3-1.html>.

220. Eubanks, *supra* note 74, at 298.



dies to large corporations.<sup>221</sup> Sustainable agriculture “is a response to the growing awareness that an agriculture that degrades the natural environment and weakens the social fabric of society cannot meet the needs of people over time, no matter how productive and profitable it may appear to be in the short run.”<sup>222</sup> Essentially, sustainable agriculture emphasizes meeting the needs of today while ensuring productive farms in the future.<sup>223</sup> “[M]anagement-intensive grazing, integrated crop and livestock farming, diverse crop rotations, cover crops, and intercropping” are all practices utilized by the new American farmer.<sup>224</sup>60

If the government would incentivize small and large farmers to invest in these kinds of farming methods, there would undoubtedly be important changes in the way our foods are grown and processed.<sup>225</sup> As it stands, we are funding efficiency-based models of farming, and in the process continuing to fail at updating our agriculture policy to a long-term approach that considers health, environment, and fairness.<sup>226</sup>

221. See JOHN E. IKERD, *CRISIS AND OPPORTUNITY: SUSTAINABILITY IN AMERICAN AGRICULTURE* 11 (2008) (introducing idea of sustainable agriculture as an alternative to industrial farms); see also Eubanks, *supra* note 74, at 304 (describing the results of moving towards “paying farmers for employing . . . sustainable agricultural methods,” rather than large government subsidies benefitting industrial agriculture).

222. IKERD, *supra* note 221.

223. See *id.* (stating that “[a] sustainable agriculture must be capable of meeting the needs of the present while leaving equal or better opportunities in the future.”).

224. 60 *Id.* at 13.

225. See *id.* (describing methods used by the new American farmer, who is able to “reduce costs and increase profits while protecting the natural environment and supporting their local communities.”).

226. See Eubanks, *supra* note 74, at 304–05 (explaining how a move to the “proposed sustainable agriculture subsidy system” will benefit not only farmers, but also the communities in which they farm).

By moving away from corn and commodity crop subsidies in favor of paying farmers for employing some of the sustainable agricultural methods enumerated above, Congress will foster a much more effective piece of legislation that is more aligned with the original goals of the Farm Bill. As seen with our nation’s massive corn production tied solely to subsidies, farmers will farm wherever the money is. If sustainable agriculture is what results in subsidies, sustainable agriculture will likely be what farmers undertake on their farms in order to survive. Further, all available data indicates that many farmers genuinely want to grow healthier foods, maintain their communities, and conserve their natural ecosystems, but they have been pressured to farm corn and other commodity crops because that is where past profits could be garnered. Although most farmers in the United States do not want Farm Bill subsidies eliminated or phased out, farmers ‘show[ ] strong support for programs focused on conservation’ and seem very concerned about the status of the natural environment. This is not surprising considering the interdependent relationship between healthy farms and a healthy environment: long-term farm health requires a high functioning local ecosystem that can sufficiently supply all of a farm’s needs. To prevent degradation of this important ecosystem, which suffers from ‘the tragedy of the commons’ under the cur-

### C. *What Does This All Mean?*

America's current farm policy was born over three quarters of a century ago. Farming has changed, and more importantly, the world has changed. Noble policies during the Great Depression do not necessarily translate into good policy in the current Great Recession. We now have a farm bill that promotes big business and multi-billion dollar industries that are able to take advantage of the system. No longer are small farmers receiving the majority of government assistance as originally intended. The successful efforts of lobbyists and farm state legislators have allowed the perpetuation of outdated farm subsidies—to the great benefit of large corporate farms.

In addition, due to the outright injustice of the current system there are several other negative consequences following from the existing structure of agriculture subsidies. Continuing to subsidize high calorie foods without supporting healthy fruits and vegetables will only accelerate the existing obesity epidemic. Our nation's natural resources and environmental health are also in peril if we do not change the way we plant, harvest, and process our growing food needs. We will not be able to legitimately address the immigration issues we face so long as we skew the Mexican market economy with artificially cheap agricultural products, forcing displaced Mexican farmers north in search of a better life.

We cannot wait any longer; the time for change is now. The pressures are indeed building against an outdated farm policy. As more citizens become aware of the inequalities of America's farm subsidies, they should and they will demand change. The current recession has forced increased scrutiny on essentially all spending programs and compelled politicians from both parties to take public stands on the spending measures they support. The defenders of wasteful corporate welfare have had no choice but to become less vocal.

The current policy of subsidizing big business is more than an agriculture problem. The issue goes to the heart of America's future. With wealth inequality widening at alarming rates,<sup>227</sup> the middle class and certainly the lower class will continue to feel the biggest impact of the current, and no doubt, future recessions. We do not want to continue appeasing big business at the expense of the vast majority of Americans.

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rent Farm Bill subsidy regime, the proposed sustainable agriculture subsidy system will pay farmers to protect this common pool resource.

*Id.*

227. See Mackenzie Weinger, *Wealth Gap Widening in U.S., Globally, Report Says*, POLITICO (Dec. 5, 2011, 2:15 PM), <http://www.politico.com/news/stories/1211/69803.html> (discussing the growing income disparity between the wealthiest and lowest members of American society).

The corporate welfare of American farming is not really trickling down to those farmers not making record profits. Right now the top 10% of recipients still receive 75% of all subsidy money, while approximately two-thirds of farmers get absolutely nothing.<sup>228</sup> Why should the American public to continue to fund multi-million dollar companies? We simply cannot allow the brazen actions of special interests to continue unchallenged. Additionally, legislators will have a harder time telling their constituents that they will continue to fund the big corn distributor, who makes millions, when military spending<sup>229</sup> and Medicaid<sup>230</sup> are on the chopping blocks.

Reforming the system will not only ease the nation's financial situation, it will protect other farm bill priorities—such as nutrition and conservation programs—from further cuts. Unless the Super Committee acts first, 2012 could shape up to be the year that Congress enacts dramatic reform of the farm bill, the year that America's lawmakers finally say: Enough is enough.<sup>231</sup>

The bottom line is that the public must force the change necessary to right the system; they must demand that Congress protects the interests of the nation as a whole, not the interests of corporate agriculture.<sup>232</sup> As noted author Rachel Carson wrote:

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228. *The United States Summary Information*, *supra* note 12.

229. See Sam Stein, *Super Committee Member Jon Kyl Turns Eye Towards Saving Pentagon From Trigger Cuts*, HUFFINGTON POST (Nov. 20, 2011, 2:35 PM), [http://www.huffingtonpost.com/2011/11/20/super-committee-jon-kyl\\_n\\_1103821.html](http://www.huffingtonpost.com/2011/11/20/super-committee-jon-kyl_n_1103821.html) (explaining Senator Kyl's plan to protect defense spending from major budget cuts).

230. Julian Pecquet, *Obama Administration Approves Massive Medicaid Cuts Requested by California*, THE HILL, (Oct. 27, 2011, 6:42 PM), <http://thehill.com/blogs/healthwatch/medicaid/190349-obama-administration-partially-approves-massive-medicaid-cuts-requested-by-california>.

231. Sciammacco, *supra* note 33.

232. See MORGAN, *THE FARM BILL AND BEYOND*, *supra* note 16, at 58 (writing that the key is communication). Morgan states that:

[f]armers and consumers should be natural allies in trying to bring about a food system that protects farmers and ranchers against some of their risks, while also encouraging good environmental practices, healthier and safer food, and globally responsible policies. For reformers the way forward may involve helping these two groups to overcome their historical differences and speak with one voice.

*Id.* This appears to be an important element of the broken system. Is the problem simply perpetuated by greed and inefficiency, or is there also a lack of proper communication between the parties involved, outside of the government? While greed cannot be ignored, increased communication between those with similar if not completely aligned interests, could only benefit a progression of change. See also Clarke, *supra* note 20, at 112 (asserting that technology advances will force the current subsidy policies to change).

Eventually, there will be movement on agriculture subsidies. The move towards biofuels has already led to increased prices for several crops, especially corn, that could

We urgently need an end to these false assurances, to the sugar-coating of unpalatable facts. It is the public that is being asked to assume the risks . . . . The public must decide whether it wishes to continue on the present road, and it can do so only when in full possession of the facts.<sup>233</sup>

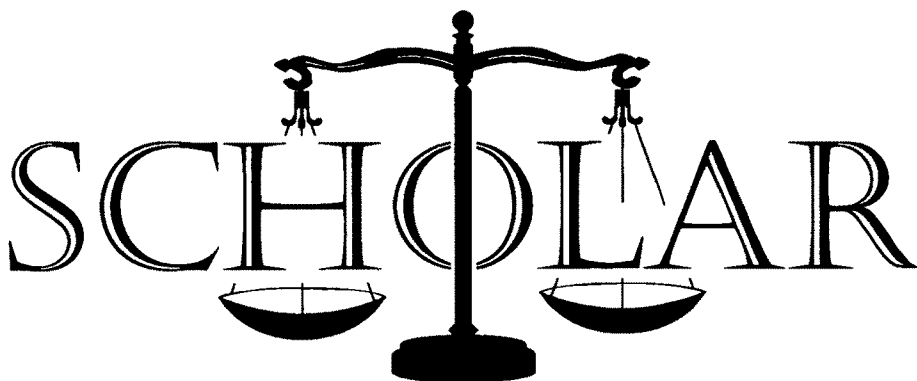
We must all make an effort to educate ourselves on the realities of our nation's food supply, or else we risk continuing to doom ourselves to the outdated policies of the past at the expense of our future.

---

ease the pressure in the United States to provide subsidies to traditional agricultural products. It will lead to increased pressure to provide subsidies to promote the development of biofuels—some of which could result in subsidies to agriculture (perhaps to livestock businesses to offset the increasing cost of feed).

*Id.*

233. CARSON, *supra* note 214.



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ST. MARY'S LAW REVIEW ON RACE AND SOCIAL JUSTICE

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VOLUME 15

SYMPOSIUM ISSUE

NUMBER 3

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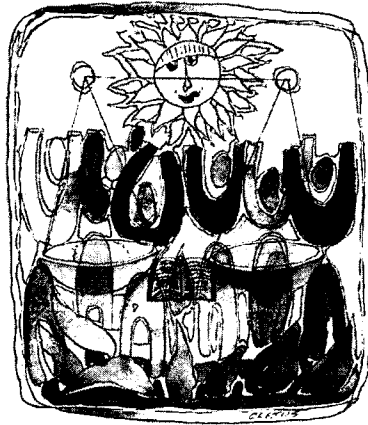
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*The Scholar: St. Mary's Law Review on Race and Social Justice* seeks to speak on behalf of minorities by reaching out to the larger community, to inform them, to share with them, to educate them, and to grow with them. The goal of *The Scholar* is to give all minorities a "voice" in the publication of a legal journal on issues affecting all minorities.

In today's climate, where affirmative action is seen as a necessary evil, and where discrimination is viewed as a problem of the past, this scholarly journal wishes to extend and further the discourse of issues that touch upon race, ethnicity, class, gender, and sexual identity, as well as the countless other labels applied to individuals and groups in our society.

Our primary goal is to educate ourselves, and in the process, offer some different perspectives not often allowed or sought after in our society. *The Scholar* members and staff will strive diligently and honestly to produce articles that will offer insights into the daily struggles of minorities today.

The articles published in *The Scholar* will be building blocks for an understanding of the issues that face all of us today. These building blocks will form bridges: bridges to bring together all the members in our society, bridges to connect all groups that comprise our community, and bridges to access self-discovery and an understanding of the 'other.'

We wish to add to the existing discourse on the role of the law and hegemony in the lives and identities of minorities. We plan for the work of this journal to be transformative: it will educate, inform, and enlighten those who participate. We are creating an environment that will allow everyone to learn, to teach, to share, to work together, and to contribute to the legal and educational communities.

*The Scholar* is a sign of hope for a promising future and for a better understanding of all members of our society.

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The Sarita Kenedy East Law Library staff, for patiently assisting our research and aiding us in locating even the most obscure sources;

The previous Editorial Boards and Staff Writers of *The Scholar*, who worked tirelessly to continue the efforts of the founders and without whose dedication *The Scholar* would not be entering its fifteenth volume;

Charles Cantú, Dean of St. Mary's University School of Law, Reynaldo Valencia, Associate Dean of St. Mary's University School of Law, Professor Amy Kastely and the rest of the faculty advisory committee for their unyielding support;

Benjamin Thomas Greer, Scott Davidson Dyle, Bill Ong Hing, Bill Piatt, Rachel Ambler, Renata Robertson, B. Ryan Byrd, and Naomi Cobb for their contribution to this issue; and

Finally, we thank our families, friends, and other loved ones, for their patience, understanding, and support as we seek to further the mission of *The Scholar*. They have done more to help ensure our success than they may ever realize.





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ST. MARY'S LAW REVIEW ON RACE AND SOCIAL JUSTICE

Dear Symposium Attendee:

On behalf of the Editorial Board members and the Staff Writers for *The Scholar: St. Mary's Law Review on Race and Social Justice*, thank you for attending our 2013 Symposium, "Immigration Law: Practice and Policy in the Twenty-First Century." It is *The Scholar Law Review's* goal to provide a strong immigration CLE for practitioners and an engaging educational experience for current law students. Major topics to be addressed at our Symposium include: the intersection of criminal law and immigration, the criminal sentencing of immigrants, religious asylum, prosecutorial discretion, naturalization perils and opportunities, special immigrant juvenile status, imputing parental immigration status for undocumented children, employer sanctions and ICE audits, and ethical concerns associated with immigration law practice.

The speakers for the 2013 Immigration Symposium are comprised of a diverse blend of professors, practitioners, and government agents. The academic speakers represent three different law schools—University of San Francisco School of Law, Washington & Lee University School of Law, and Southern University Law Center. Our practitioner speakers represent several law offices: Shivers & Shivers (San Antonio, Texas); Tausk & Vega Attorneys at Law (Houston, Texas); and The Balli Law Office (Laredo, Texas). In addition, our speakers include a Special Agent for the U.S. Department of Homeland Security, a Former Special Deputy Attorney General for the California Department of Justice, and the Executive Director of the Bernardo Kohler Center in Austin, Texas.

*The Scholar: St. Mary's Law Review on Race and Social Justice* is in its fifteenth year of publication and is one of the largest specialty law reviews in the country. *The Scholar Law Review* was founded in order to give a voice to immigrants, ethnic minorities, gays and lesbians, racial minorities, women, and other disenfranchised groups not represented by the traditional legal discourse. *The Scholar Law Review* publishes four issues a year and presents an annual symposium on a legal topic important to minorities. The steadfast mission of *The Scholar Law Review* is to give a voice to the voiceless.

Once again, thank you for support and for attending our 2013 Symposium, "Immigration Law: Practice and Policy in the Twenty-First Century." We hope you enjoy the symposium and join us at our next year's event.

Sincerely,

*Claudia Valdez Balli*

Claudia Valdez Balli  
Volume 15 Symposium Editor  
*The Scholar: St. Mary's Law Review on Race and Social Justice*

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**ST. MARY'S LAW REVIEW ON RACE AND SOCIAL JUSTICE**

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on Immigration Law:  
Practice & Policy  
in the  
Twenty-First Century**

**Friday, April 5, 2013**

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**Nancy Taylor Shivers** practices immigration law exclusively. Ms. Shivers was Board Certified in Immigration & Nationality Law by the Texas Board of Legal Specialization in 1984. She has been listed in the immigration category of "The Best Lawyers in America" since 1993 and among "Texas Monthly's Super Lawyers" in immigration law since 2003. Ms. Shivers graduated from the University of Houston Law School, where she served as Editor in Chief of the Houston Law Review. She graduated from the University of Kansas with a B.A. in English. Licensed in Texas since 1977, Ms. Shivers has practiced immigration law in San Antonio since 1982.

**9:45 a.m.-10:30 a.m. "PROSECUTORIAL DISCRETION"**



**Bill Ong Hing**, Professor of Law at the University of San Francisco and Professor Emeritus, U.C. California, Davis School of Law, teaches Immigration Policy, Rebellious Lawyering, Negotiation, and Evidence. Throughout his career, he has pursued social justice by combining community work, litigation, and scholarship. He is the author of numerous academic and practice-oriented books and articles on immigration policy and community lawyering. His books include *Ethical Borders—NAFTA, Globalization and Mexican Migration*; *Deporting Our Souls—Values, Morality, and Immigration Policy*; and *Defining America Through Immigration Policy*.

**10:30 a.m.-10:40 a.m. BREAK**

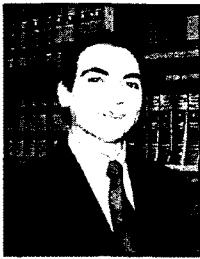
**10:40 a.m.-11:25 a.m. "HOME, BUT NOT HOME ENOUGH:  
IMPUTING PARENTAL IMMIGRATION STATUS AND RESIDENCY  
FOR FORMERLY UNDOCUMENTED IMMIGRANT CHILDREN"**



**Johanna KP Dennis**, Associate Professor of Law at Southern University Law Center, earned her B.A. degree from Rutgers University; her J.D. degree from Temple University, James E. Beasley School of Law; her M.S. in Biotechnology from The Johns Hopkins University; and her M.A.Ed. in Higher Education from Trident University International. She teaches immigration law, patent law, and commercial paper. She has written, published, and presented articles in patent law, immigration law, multiculturalism, and legal writing skills and pedagogy. She is admitted to the Pennsylvania Bar, the Second Circuit Court of Appeals, and the Patent and Trademark Office.



**11:25 a.m.-12:10 p.m. "SENTENCING ADVOCACY FOR IMMIGRANTS IN FEDERAL COURT"**



**Roberto Balli** earned his J.D. from the University of Houston Law Center. He is a Criminal Defense Lawyer in the Texas border town of Laredo, where he has been practicing since 2006. He started his career as Assistant District Attorney in the border counties of Webb and Zapata, where he also served as the First Assistant District Attorney. Mr. Balli is licensed in the Southern and Western Districts of Texas, and in the Fifth Circuit Court of Appeals. Mr. Balli is regularly invited to present at CLE lectures on various criminal law topics at events sponsored by the Laredo-Webb County Bar Association and the Texas Criminal Defense Lawyers Association. He is Board Certified in Criminal Law by the Texas Board of Legal Specialization.

**12:10 p.m.-1:00 p.m. LUNCH**

**1:00 p.m.-1:45 p.m. "IMMIGRATION AND CRIME: AN OVERVIEW"**



**Rosemary Vega** received her B.A. in political science with a minor in Spanish from Austin College in Sherman, Texas in 1997. She received her J.D. from St. Mary's University Law School in 2000. She has been licensed to practice Law in the State of Texas since 2000, and is also licensed in the Southern District of Texas. Ms. Vega's Immigration law experience is wide ranging in a variety of areas, including asylum, T-Visas, U-Visas, VAWA, removal cases, and business and family-based immigration. Ms. Vega is an active member of the American Immigration Lawyers Association (AILA). She is also a member of the Association of Women Attorneys (AWA), the Mexican Bar Association (MABAH), and the College of the State Bar of Texas.

**1:45 p.m.-2:30 p.m. "ICE AUDITS: WHAT EMPLOYERS MUST DO TO COMPLY AND PREPARE FOR AN ICE AUDIT"**



**Special Agent Joseph Martinez, Jr.** works for the Department of Homeland Security in San Antonio, TX. His presentation will cover the requirements that employers who hire immigrants must comply with. In addition, he will explain the process that attorneys need to ensure their clients follow to be in compliance with the law and be prepared in case their company is subjected to an audit from Immigration and Customs Enforcement.

Customs Enforcement.

**2:30 p.m.-2:40 p.m. BREAK**

**2:40 p.m.-3:25 p.m. "SPECIAL IMMIGRANT JUVENILE STATUS AND RELATED ETHICAL ISSUES"**



**David R. Walding** is the Executive Director of the Bernardo Kohler Center, Inc. and is fully accredited to represent individuals in matters before DHS and the Immigration Courts. With 18 years of experience in immigration law, he concentrates on relief for unaccompanied juveniles. Prior to becoming Director of the BKC, he was the project coordinator at Volunteer Advocates for Immigrant Justice (V.A.I.J.). His particular expertise is in the C4 countries of Central American (Guatemala, El Salvador, Honduras, & Nicaragua).

**3:25 p.m.-4:10 p.m. "HUMAN TRAFFICKING: APPLYING FOR T-VISAS AND ETHICAL CONCERNS"**



**Benjamin T. Greer** is a Former Special Deputy Attorney General in California's Department of Justice and currently the Staff Counsel for the California Department of State Hospitals dealing with sexually violent predators. As a specializing Deputy Attorney General he was a lead member of the California Attorney General's Human Trafficking Special Projects Team and coordinated directly with the California Attorney General. Before joining the Attorney General's staff, Mr. Greer was a research attorney and training coordinator for the California District Attorneys Association for their VAWA Project Department. He has previously presented and published extensively on a myriad of human trafficking and domestic violence topics.

**4:10 p.m.-4:55 p.m. "RELIGIOUS ASYLUM"**



**Aaron Hass**, Oliver Hill Fellow at Washington Lee University School of Law, received his Bachelor of Arts with honors in 2000 from the University of Chicago and his J.D. in 2006 from Harvard Law School. He is admitted to practice in Texas, the Western District of Texas, and the Fifth Circuit Court of Appeals. Professor Hass has served as a summer associate and Equal Justice America fellow at The Legal Aid Society of Cleveland, as a columnist for San Antonio Current; and as a staff attorney for Texas RioGrande Legal Aid. In addition, he has volunteered for U.S. Peace Corps.

**4:55 p.m.-5:00 p.m. CLOSING REMARKS**